

INTER-OFFICE COMMUNICATION FROM
THE OFFICE OF
CLERK OF THE BOARD OF COUNTY COMMISSIONERS

October 20, 1986

TO: Jan Winters, County Administrator
Lisa Heasley, County Attorney's Office
Chip Carlson, Asst. Co. Attorney
David Bludworth, State Attorney
Joy Shearer, Asst. Attorney General
Lt. Jack H. Rochester, Sr. - Sheriff's Dept.-Civil
Jerry Nolan, Sheriff's Office-Admin.
John Lehner, PZ&B
Bob Palchanis, Building Division
Patty Young, 4th Dist. Ct. of Appeals
Law Library
County Library (2)
Pinky Yount, PBC Municipal League, Inc.
1708 N. Lakeside Drive, Lake Worth, FL 33460
Cable TV
Public Information Office - Judy Hemberger, Finance
- Richard Iavarone, Finance

FROM: John W. Dame
Chief Deputy Clerk

RE: PALM BEACH COUNTY ORDINANCE DISTRIBUTION

ORDINANCE NO. 86-35

TITLE REFERENCE:

**PALM BEACH COUNTY ORDINANCE COMPLETELY &
COMPREHENSIVELY REVISING THE COUNTY'S
REGULATION OF CABLE TELEVISION IN P.B.C., FL**

Attached is a copy of the above referenced Ordinance of Palm Beach County. This Ordinance has been filed with Florida Department of State and forwarded to Municipal Code Corporation for codification. The effective date is October 14, 1986..

JWD:ph/lc

attachment

cc:* Commissioners, BCC
Clerk of BCC
Minutes

* If a copy of ord. is needed please advise Ms. Lorie Clinger, Finance Department at 837-2959.

ORDINANCE NO. 86-35

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, COMPLETELY AND COMPREHENSIVELY REVISING THE COUNTY'S REGULATION OF CABLE TELEVISION IN PALM BEACH COUNTY, FLORIDA, BY PROVIDING A PROCEDURE AND EVALUATION CRITERIA FOR THE CONSIDERATION OF FRANCHISE APPLICATIONS, BY PROVIDING A NEW SET OF REGULATIONS, REQUIREMENTS, AND FEES OF CABLE OPERATORS, BY PROVIDING RESERVATIONS OF THE COUNTY; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND APPLICABILITY TO CABLE OPERATORS; PROVIDING RELATIONSHIP WITH PREVIOUS REGULATIONS.

ARTICLE I. TITLE

This Ordinance shall be known, and may be cited, as the "Palm Beach County Cable Television Ordinance of 1986".

ARTICLE II. LEGISLATIVE INTENT AND DECLARATION

The Board of County Commissioners declares that by allowing Cable Operators in the unincorporated area of Palm Beach County the Board of County Commissioners is giving up a proprietary function for which it should be compensated.

The Board of County Commissioners finds that the regulation of County rights-of-way and regulation to promote quality Cable Services are substantial public purposes. The Board of County Commissioners finds that the provision of cable television Services serves a public purpose by providing a medium of diverse information and Other Services.

The Board of County Commissioners declares that cable television has characteristics of a public utility. When a Cable System is installed in a geographic area, and Cable Services are provided to Subscribers, Installation by other Cable Operators in the same geographic area is unlikely and may be contrary to the public benefit because the market penetration of the initial installer leaves too few potential Subscribers to economically warrant the expense associated with providing direct overlapping Service. Because of this natural monopoly characteristic, cable television has not been installed with directly overlapping Facilities And Equipment with so-called head to head competition, for the most part in Palm Beach County.

The Board of County Commissioners further finds that the regulation of the cable television industry is in furtherance of a

1 substantial governmental interest relating to the regulation of the use
2 of rights-of-way and easements, ensuring the continued high-quality and
3 diverse provision of television messages and Related Services at
4 competitive prices, and ensuring a level and form of competition
5 beneficial to the consumer.

6 The Board of County Commissioners further finds that reasonable
7 competition between Cable Operators in the provision of Cable Services
8 has been fostered by granting overlapping Franchise areas. This
9 reasonable competition functions in part to promote high quality cable
10 Services at reasonable costs and also to promote the expansion and
11 increased market penetration of cable television so as to make cable
12 television available to the greatest number of residents economically
13 practical. The substantial public interests of receiving the best
14 Service at a low price and the promotion of diverse information is
15 thereby promoted in part. The Board of County Commissioners further
16 finds that reasonable competition fosters the use by Cable Operators of
17 the most advanced technology available at an economic price.

18 The Board of County Commissioners declares that the regulation
19 of Cable Operators is necessary to further the substantial public
20 purposes of controlling and limiting the use of public rights-of-way,
21 mitigating, minimizing, and avoiding the disruption and burdening of
22 public and private property, ensuring maximum availability of cable
23 television Services, controlling the economic scarcity of Cable Services
24 so as to ensure the continued availability of cable television Services
25 to the greatest number of residents of Palm Beach County at the lowest
26 prices economically practical, and ensuring the highest quality and best
27 Services to the subscribing public.

28 The Board of County Commissioners declares that the desire to
29 promote competition could ultimately be counterproductive to the desire
30 to maximize the availability of cable television to the greatest number
31 of Palm Beach County residents at the lowest prices economically
32 practical.

33 Unfettered competition could ultimately result in many cable
34 operators serving only high-density, low cost, lucrative areas with cable
35 operators being economically unable to provide cable television Services

1 to less densely developed, more costly, or less lucrative areas.
2 Unfettered competition could ultimately result in the substantial
3 duplication of facilities and equipment, a market penetration of the
4 overlapping Cable Operators substantially lower than the market
5 penetration of non-overbuilt systems, thereby requiring a higher charge
6 to pay the cost of the Installation, maintenance, repair, upgrading, and
7 operation of the system, or resulting in the erosion of Services. The
8 Board of County Commissioners declares that that Service to residents and
9 Subscribers could be diminished if the entry by Cable Operators into Palm
10 Beach County is not regulated.

11 The Board of County Commissioners declares that the County's
12 ability to effectively regulate Cable Operators and the use of public
13 rights-of-way could be impaired as the number of Cable Operators
14 increases.

15 The Board of County Commissioners declares that the desire to
16 promote competition must be balanced against the desire to ensure the
17 maximum availability of cable television Services, the County's ability
18 to effectively regulate Cable Operators, the economic scarcity involved
19 in the provision of cable television Services, and the use, disruption,
20 and physical limitations of public and private property.

21 The Board of County Commissioners is cognizant of the
22 restrictions placed on it relating to the regulation of Satellite Master
23 Antenna Systems [SMATV]. In adopting this Ordinance the Board of County
24 Commissioners in no manner intends to regulate SMATVs as a cable
25 operator. Nothing herein shall be construed as an attempt at indirect
26 regulation nor as a limitation on the authority of property owners to
27 establish SMATV, subject, however, to all lawful County regulation.

28 The Board of County Commissioners declares that the provision
29 of cable television Services serves a public purpose as a medium of
30 communication and that fostering the growth and provision of cable
31 Services provides a diversity of information sources.

32 ARTICLE III. APPLICABILITY

33 Section 1. Unincorporated Area

34 This Ordinance shall apply in its entirety to all incorporated
35 and unincorporated areas of Palm Beach County, Florida.

1 Section 2. Annexed Area

2 To the extent that a municipality does not assume
3 jurisdictional responsibility over a Cable Operator providing cable
4 Services or cable Related Services in an area annexed into the
5 municipality after the Cable Operator was Franchised by the County, this
6 Ordinance shall apply in its entirety.

7 Section 3. Municipal Area

8 To the extent that a municipality has not assumed jurisdiction
9 over the regulation of Cable Operators, this Ordinance shall apply in its
10 entirety. Where a municipality has established itself as a franchising
11 authority of Cable Operators, this ordinance shall not apply except to
12 the extent set forth in Article XIV, Permit Required, Section 2,
13 Paragraphs (A) and (B), pursuant to Florida law.

14 Section 4. Interlocal Agreements

15 The Board of County Commissioners may enter into interlocal
16 governmental agreements with municipalities or other jurisdictions to
17 establish the County, the municipality, or the other jurisdiction as
18 Franchising Authority or to create arrangements of concurrent
19 jurisdiction.

20 ARTICLE IV. DEFINITIONS, RULES OF CONSTRUCTION

21 Section 1. Definitions

22 For purposes of this Ordinance, the terms set forth in this
23 Paragraph A shall mean:

24 ACT - Cable Communications Policy Act of 1984.

25 AFFILIATE - when used in relation to any Person, means another
26 Person who owns or controls, is owned or controlled by, or is under
27 common ownership or control with, such Person;

28 ANNUAL REPORT - annual audited financial report.

29 APPLICANT - all officers, agents, employees, and
30 representatives seeking an approval, grant, or permit under this
31 Ordinance, or other ordinance, or rules or regulations.

32 APPLICATION PROCESS - the acceptance, review, or approval or
33 denial of an application for a Franchise award, transfer, or renewal,
34 including staff action, action of the Cable Board, or the Board of County
35 Commissioners.

1 BASIC CABLE SERVICE - any Service tier which includes the
2 retransmission of local television broadcast signals.

3 CABLE BOARD - the board created by Article XV herein.

4 CABLE CHANNEL or CHANNEL - a portion of the electromagnetic
5 frequency spectrum which is used in a Cable System and which is capable
6 of delivering a television Channel (as television Channel is defined by
7 the Commission by regulation).

8 CABLE COORDINATOR - the office of the Cable Coordinator
9 required by Article XXXII.

10 CABLE OPERATOR - any Person or group of Persons (1) who
11 provides Cable Service over a Cable System and directly or through one or
12 more Affiliates owns a significant interest in such Cable System, or (2)
13 who otherwise controls or is responsible for, through any arrangement,
14 the management and operation of such a Cable System.

15 CABLE RELATED SERVICE, RELATED SERVICE, OTHER SERVICE -
16 Services provided utilizing the cable system which are not Cable
17 Services.

18 CABLE SERVICE -

19 (1) the one-way transmission to Subscribers of (a) video
20 programming, or (b) Other Programming Service, and

21 (2) Subscriber interaction, if any, which is required for the
22 selection of such Video Programming or Other Programming Service.

23 CABLE SYSTEM - a facility, consisting of a set of closed
24 transmission paths and associated signal generation, reception and
25 control equipment that is designed to provide Cable Service which
26 includes Video Programming and which is provided to multiple Subscribers
27 within a community, but such term does not include (1) a facility or
28 combination of facilities that serves only to retransmit the television
29 signals of one or more television broadcast stations; (2) a facility or
30 combination of facilities that serves only Subscribers in one or more
31 multiple unit dwellings under common ownership, control, or management,
32 unless such facility or facilities use any Public Right-Of-Way; (3) a
33 facility of a common carrier which is subject, in whole or in part, to
34 the provisions of Title II of the Communications Act of 1934 as amended,
35 except that such facility shall be considered a Cable System (other than

1 for purposes of section 621(c)) of the Act to the extent such facility is
2 used in the transmission of Video Programming directly to Subscribers; or
3 (4) any facilities of any electric utility used solely for operating its
4 electric utility system.

5 COUNTY ADMINISTRATOR - the County Administrator or the
6 Assistant County Administrator to whom the office of the Cable
7 Coordinator is assigned.

8 COUNTY ENGINEER - the Palm Beach County Department of
9 Engineering and Public Works.

10 COUNTY ROAD SYSTEM - streets, highways, and roads under the
11 jurisdiction of the County pursuant to the Florida Transportation Code.

12 EASEMENT DEDICATED FOR COMPATIBLE USE - an easement open for
13 the use of a cable operator pursuant to Section 621(a)(2) of the Act; and
14 for purposes of this Ordinance relating to affirmatively providing access
15 to utility easements dedicated by plats recorded after the effective date
16 of this Ordinance all utility easements established by plat approval
17 after the effective date of this Ordinance pursuant to the Subdivision
18 and Platting Regulations of Palm Beach County, Florida, Ordinance No.
19 73-4, as amended, or as may be amended or supplanted.

20 EASEMENT HOLDER OR BENEFICIARY - the Person to whom an easement
21 was or is dedicated, deeded, or granted and the Persons entitled to the
22 lawful and permitted use of the easement.

23 EXCLUSIVE EASEMENT - an easement, which by its terms and which
24 by law is for the exclusive use of the Easement Holder.

25 FACILITIES AND EQUIPMENT - wires, cables, conductors, ducts,
26 conduits, vaults, manholes, trenches, amplifiers, appliances,
27 attachments, poles and other property and equipment as are necessary and
28 appurtenant to the operation of the cable communications system. In the
29 context of public, educational, or government (PEG) access, it shall
30 include all of the above and studios, cameras, antennae, dishes,
31 buildings, chairs, desks, vehicles and all other capital equipment
32 associated with the provision of PEG programming and access.

33 FISCAL PERIOD - a calendar year beginning January 1 of each
34 year.

1 FRANCHISE - an initial authorization, or renewal thereof
2 (including a renewal of an authorization which has been granted subject
3 to Section 626 of the Act), issued by the County or a municipality,
4 whether such authorization is referred to as a Franchise, permit,
5 License, resolution, contract, certificate, agreement, or otherwise,
6 which authorizes the construction or operation of a Cable System. It
7 shall include any expansion of Franchise. All franchises shall hereby be
8 non-exclusive.

9 FRANCHISE ACCEPTANCE AGREEMENT - the document executed by the
10 Cable Operator as set forth in Article X.

11 FRANCHISE APPLICATION - an application for an initial award of
12 Franchise, an expansion, or a renewal.

13 FRANCHISE FEE - the charge based on the Gross Revenue of the
14 Cable Operator levied pursuant to this Ordinance. It does not include:
15 (1) any tax, fee, or assessment of general applicability; (2) fees for
16 capital costs association with public, educational, or government access
17 Facilities And Equipment; or (3) any other fees or charges not based
18 solely on the Gross Revenue of the Cable Operator.

19 FRANCHISING AUTHORITY - any governmental entity empowered by
20 Federal, State, or local law to grant a Franchise.

21 GROSS REVENUE - all revenues derived directly or indirectly by
22 the Cable Operator, its Affiliates, subsidiaries, parent, and any Person
23 in which the Cable Operator has a financial interest, from or in direct
24 or indirect connection with the operation of a Cable System pursuant to
25 this Ordinance; all revenues shall include, but not be limited to, basic
26 Subscriber Service monthly fees, pay cable fees, Installation and
27 reconnection fees, wiring fees, leased Channel fees, converter rentals,
28 and advertising revenues, and that this shall not include any taxes on
29 Services furnished by the Cable Operator herein imposed directly upon any
30 Subscriber or user by the State, or other governmental unit and collected
31 by the Cable Operator on behalf of other governmental units.

32 INSTALLATION - the connection of the system from feeder cable
33 to Subscribers' terminals.

1 INSTITUTIONAL NETWORK - a communication network which is
2 constructed or operated by the Cable Operator and which is generally
3 available only to Persons who are not residential Subscribers.

4 LICENSE - that document issued by Cable Coordinator evidencing
5 approval of a Franchise application by the Board of County Commissioners.

6 NATIONAL ELECTRIC CODE - the most recent edition of The
7 National Electric Code adopted as amended by the Board of County
8 Commissioners.

9 OTHER PROGRAMMING SERVICE - information that a Cable Operator
10 makes available to all Subscribers generally;

11 OTHER SERVICES - those Services provided by the Cable Operator
12 using the Cable System, or a part thereof, excluding Cable Services. It
13 does not include Services of a Cable Operator not related, directly or
14 indirectly, to the Cable System.

15 OVERLAPPING CABLE OPERATORS - those Cable Operators holding a
16 Franchise which, in whole or in part, covers the same area as a Franchise
17 of another Cable Operator or other Cable Operators.

18 OUTAGE - the complete or partial loss of signal, whether audio
19 or visual, or the provision of signal substantially below the technical
20 standards set forth in this Ordinance.

21 PERFORMANCE SECURITY - a letter of credit; performance, penal,
22 and payment bond; or escrow agreement securing the full and faithful
23 performance of this Ordinance.

24 PERSON - an individual, partnership, association, joint stock
25 company, trust, corporation, or governmental entity;

26 PUBLIC, EDUCATIONAL, OR GOVERNMENTAL (PEG) ACCESS FACILITIES -

27 (1) Channel capacity designated for public, educational, or
28 governmental use; and

29 (2) Facilities And Equipment for the use of such Channel
30 capacity.

31 PUBLIC RIGHT-OF-WAY - a way or place of whatever nature,
32 publicly held and presently opened or established to be opened to the use
33 of the public for purposes of vehicular travel. Public right-of-way
34 shall include streets, roads, highways, or alleys.

1 REPRESENTATIONS MADE IN THE APPLICATION PROCESS - all material
2 representations of the Applicant, its officers, employees, agents, and
3 representatives in the form of documents submitted as part of, incidental
4 to, or pursuant to the Application Process involved in a request for an
5 initial Franchise, a renewal, or a transfer; and all material
6 representations made by the Applicant, its officers, employees, agents,
7 and representives made at Cable Board meetings, hearings, or meetings of
8 the Board of County Commissioners relating to a request for an initial
9 Franchise, a renewal, or transfer.

10 REQUIREMENTS OF THIS ORDINANCE, PROVISIONS OF THIS ORDINANCE -
11 the specific provisions of this Ordinance, including the representations
12 of the Applicant or Cable Operator, its representatives, officers,
13 employees, and agents, made in the Application Process for the approval
14 of a Franchise, transfer, or renewal.

15 SATELLITE MASTER ANTENNA SYSTEM (SMATV SYSTEM) - a facility
16 which includes a set of closed transmission paths and associated signal
17 generation, reception, and control equipment which is not Franchised and
18 which serves only Subscribers in one or more multiple unit dwelling or
19 residential areas under common ownership, control, or management, not
20 using public rights-of-way.

21 SATELLITE MASTER ANTENNA SYSTEM OPERATOR - a Person providing
22 Cable Services or cable Related Services over a SMATV system.

23 SERVICE - the provision of Cable Services and Other Services to
24 the ultimate consumer.

25 SERVICE TIER - a category of Cable Service or Other Services
26 provided by a Cable Operator and for which a separate rate is charged by
27 the Cable Operator;

28 STRAND MILE - a linear mile measured on the surface of the
29 ground above or below the cable strand as such would be or is installed.

30 STRANDING - the entering into a rental agreement with the owner
31 of poles with available space so as to occupy that space. (See Article
32 XXII, Section 10)

33 SUBSCRIBER - a Person lawfully receiving Cable Services or
34 Other Services from a Cable Operator.

1 SUBSCRIBER DROPS - the Facilities And Equipment used to provide
2 Cable Services to an individual dwelling unit.

3 TECHNICIAN - an employee, contractor, or agent of the cable
4 operator with the skills to perform, and who is available to perform,
5 construction, repair, and maintenance of the Cable System, including the
6 Facilities And Equipment installed by or for the Cable Operator necessary
7 to provide Services or signal to the Subscriber or user of the system.

8 U.N.C.L.E. - the Utility Notification Center Liaison
9 Excavators.

10 VIDEO PROGRAMMING - programming provided by, or generally
11 considered comparable to programming provided by, a television broadcast
12 station.

13 VIOLATION - a Violation of the terms of this Ordinance; or a
14 breach of the contractual, implied contractual, or contractual-in-fact
15 relationship established pursuant to this Ordinance or the
16 representations made in the Application Process.

17 Section 2. Rules of Construction

18 The following rules of construction apply to the text of this
19 Ordinance:

20 (1) The particular shall control the general.

21 (2) In case of any difference of meaning or implication
22 between the text of this Ordinance and any caption, illustration, summary
23 table, or illustrative table, the text shall control.

24 (3) The word "shall" is always mandatory and not
25 discretionary. The word "may" is permissive. The word "should" is
26 advisory.

27 (4) Words used in the present tense shall include the future;
28 and words used in the singular number shall include the plural, and the
29 plural the singular, unless the context clearly indicates the contrary.

30 (5) Unless the context clearly indicates the contrary, where a
31 provision involves two (2) or more items, conditions, provisions, or
32 events connected by the conjunction "and", "or", or "either...or", the
33 conjunction shall be interpreted as follows:

34 (a) "And" indicates that all the connected items, conditions,
35 provisions, or events shall apply.

1 (b) "Or" indicates that the connected items, conditions,
2 provisions, or events may apply singly or in any combination.

3 (c) "Either...or" indicates that the connected items,
4 conditions, provisions, or events shall apply singly but not in
5 combination.

6 (6) The word "includes" shall not limit a term to the
7 specified examples, but is intended to extend its meaning to all other
8 instances or circumstances of like kind or character.

9 (7) Time computation. In computing any period of time set
10 forth in or pursuant to this ordinance the day of the act, event, notice,
11 or default from which the designated period of time begins to run shall
12 not be included. The last day of the period so computed shall be
13 included unless it is a Saturday, Sunday or legal holiday in which event
14 the period shall run until the end of the next day which is neither a
15 Saturday, Sunday or legal holiday. When the period of time prescribed or
16 allowed is less than seven (7) days, intermediate Saturdays, Sundays and
17 legal holidays shall be excluded in the computation.

18 (8) In the event of any conflict between the provisions of
19 this Ordinance or the provisions of this Ordinance and any rule,
20 regulation, ordinance, or law, the provision which furthers the public
21 benefit to the greatest extent shall apply.

22 ARTICLE V. FRANCHISE REQUIRED

23 Section 1. Violation.

24 It shall be a Violation of this Ordinance to commence or engage
25 in the construction, operation, or maintenance of a Cable System in the
26 areas subject to the County's jurisdiction as Franchising Authority
27 pursuant to Article III without first having obtained either (1) a
28 Franchise awarded by the Board of County Commissioners and a License
29 issued by the Cable Coordinator or (2) a limited License as set forth in
30 Section 2, below.

31 Section 2. Limited License.

32 The Board of County Commissioners may award a License to a
33 municipally Franchised Cable Operator to serve unincorporated areas which
34 are not practicably Serviceable by a County Franchised Cable Operator.
35 Said License shall be revocable upon thirty (30) days notice from the

County. The License shall be revoked upon a County Franchised Cable Operator providing Service. Prior to awarding such a License, the County Franchised Cable Operators for the area shall be given notice by the Cable Coordinator of the proposed License and be given an opportunity to serve the area. If Service is provided by a County Cable Operator within sixty (60) days of the date of the notice, no limited License shall be issued.

Section 3. Waiver for Incorporated Systems

The Board of County Commissioners may waive by Resolution, approved after a public hearing, specific provisions or requirements of this Ordinance for good cause, as such provisions or requirements would apply to Cable Operators serving predominantly incorporated areas. Such shall be waived only where the subject Cable Operators System is regulated by a municipality as franchising authority and the unincorporated subscribers comprise less than fifteen percent (15%) of the systems' subscriber base.

ARTICLE VI. EFFECT OF FRANCHISE

Section 1. Permission To Construct.

(A) A Franchise awarded shall allow the Cable Operator to construct a Cable System over, under, through, across, and within municipal, County, State, and Federal rights-of-way; and within easements dedicated for compatible uses within the areas subject to the County's jurisdiction as Franchising Authority pursuant to Article III.

(B) Compatible easements - To the extent permitted by law and the terms of this ordinance the Franchisee shall be entitled to use Easements Dedicated For Compatible Use.

(1) The Board of County Commissioners finds that cable operators have experienced difficulty in providing service to persons desiring to receive cable services because of the unavailability of easements expressly allowing the use for a cable system. This difficulty results in unnecessary litigation; excessive cost to Cable Operators, and ultimately the Subscribers; the stifling of the provision and receipt of Cable Services; and prevents a broad diversity of information.

(2) Any utility easements established after the effective date of this Ordinance by plats approved pursuant to the Subdivision and Platting Regulations of Palm Beach County, Florida, Ordinance No. 73-4,

1 as amended, or as may be amended, or pursuant to any such land
2 development code which may be adopted by the Board County Commissioners
3 to supplant said Subdivision and Platting Regulations, shall not exclude
4 Cable Facilities and Equipment of Cable Operators.

5 (3) No legislative intent of Ordinance 73-4 regarding the use
6 of public utility easements dedicated on plats for the installation of
7 Cable Facilities And Equipment is hereby expressed.

8 (4) This ordinance is not intended to, and nothing herein
9 shall be construed to, preclude appropriate payments, arrangements, or
10 agreements for the use by Cable Operators of other utilities' facilities
11 and equipment, including pole attachment agreements.

12 (5) This subsection B is supplemental to, and not in
13 derogation of, Section 621(a)(2) of the Cable Communications Policy Act
14 of 1984.

15 (6) Nothing in this subsection B shall be construed as an
16 authorization to install or construct cable Facilities And Equipment in
17 easements or rights-of-way without prior compliance with the permitting
18 requirements and provisions in this Ordinance, of Palm Beach County, and
19 other governmental agencies.

20 (7) Nothing in this Article VI shall authorize the
21 Installation of cable television Facilities And Equipment in exclusive
22 easements owned by public utilities without the prior consent of such
23 utilities.

24 (8) The Cable Operator shall coordinate the Installation of
25 its Facilities And Equipment with the existing lawful users of any
26 easements to prevent damage and disruption to existing utility or cable
27 facilities or the Installation of such facilities where technical
28 limitations make it impossible to install such Facilities And Equipment.

29 (9) The Board of County Commissioners shall not be required to
30 obtain or provide rights-of-way or Easements Dedicated for Compatible Use
31 for the use of the Cable Operator.

32 (10) Should any court of competent jurisdiction rule any
33 section, paragraph, sentence clause, phrase, or word of this section
34 invalid, such ruling shall not affect any other section, paragraph,
35 sentence, clause or word. Should any court of competent jurisdiction

1 rule any section, paragraph, sentence, clause, phrase, or word invalid as
2 applied, or inapplicable, to particular facts and circumstances, such
3 shall not affect the validity of the applicability, or the applicability,
4 of such section, paragraph, sentence, clause, phrase or word to other
5 facts and circumstances. It is the intent of the Board of County
6 Commissioners to ensure maximum accessibility of the public to cable
7 television.

8 Section 2. Effect Of Accepting License, Waiver.

9 Cable operator, by acceptance of the Franchise License awarded
10 pursuant to this Ordinance, expressly acknowledges and accepts the right
11 of the County to issue a Franchise and agrees it shall not now or at any
12 time hereafter challenge this right in any way in any state or federal
13 court. Cable operator further acknowledges and accepts the right of the
14 County to exercise directly or delegate its regulatory power to a
15 subordinate body or its officers, employees, agencies, committees, or
16 departments to ensure the proper implementation of the Franchise and
17 further agrees it shall not now or at any time hereafter challenge this
18 right in any way or in any state or federal court. By accepting the
19 award of Franchise and License, the Cable Operator fully accepts and
20 agrees to be bound by all the terms of this Ordinance, the awarding
21 resolution and, regulations adopted pursuant to this Ordinance and
22 thereby waives all waivable rights it might otherwise enjoy.

23 ARTICLE VII. APPLICATION PROCEDURES AND CONTENTS

24 Section 1. Initial Fee.

25 Applications for a Franchise shall be submitted to the Cable
26 Coordinator with an initial application fee of Four Thousand Five Hundred
27 Dollars (\$4,500.00) to defray the County's costs of processing the
28 application. Applicants making application prior to September 30, 1986
29 need not pay said Four Thousand Five Hundred Dollars (\$4,500.00).

30 Section 2. License Processing Costs.

31 (A) This Article VII shall apply to applications for new
32 Franchises and for expansions of the area of existing Franchises. It
33 shall not apply to renewals or transfers of existing Franchises. It
34 shall not apply to the exchange of Licenses by existing Franchises so as
35 to come under this ordinance.

1 (B) In addition to the fee set forth in Paragraph (A) above,
2 the Applicant shall be responsible to pay the cost of any and all
3 consultants, experts, accountants, attorneys, or other Person utilized by
4 the County to assist the County in its evaluation of the application.
5 Said costs shall be paid by the Applicant prior to final consideration of
6 the request by the Board of County Commissioners.

7 Section 3. Evaluation Criteria--Desirability Of An Additional Cable
8 Operator.

9 (A) In considering the desirability of an additional or
10 expanded Cable Operator, the Board of County Commissioners shall balance
11 the desirability to promote competition in the cable television industry
12 so as to promote (1) the provision of high-quality Cable Services at the
13 lowest economic price and (2) a diversity of information against the (1)
14 ability of the County to regulate multiple Cable Operators and Services,
15 (2) disruption of public and private property by multiple cable
16 operators, (3) economic viability of Cable Operators so as to make
17 available high-quality Cable Services to the greatest number of Palm
18 Beach County residents at the lowest economically feasible price.

19 (B) To assist the Board of County Commissioners in making
20 its evaluation, the Applicant shall provide all information available to
21 it relating to:

22 (1) The extent of Installation of facilities and
23 equipment of existing Cable Operators
24 detailing the per-strand-mile density of areas
25 served, unserved areas and the per-strand-mile
26 density of such, and, the location of the
27 Facilities And Equipment of the existing
28 operators in the area for which the Applicant
29 is applying.

30 (2) The per-strand-mile densities of the areas the
31 Applicant proposes to serve and the extent to
32 which the Applicant intends to utilize bulk
33 rate contracts.

34 (3) The extent to which the Applicant intends to
35 overbuild existing Cable Operators.

- 1 (4) The detailed economic and financial
2 information and assumptions of the Applicant,
3 summarizing the financial pro formas required
4 below.

5 (C) In evaluating the possible disruption to public and
6 private property, the Board of County Commissioners may consider:

- 7 (1) The potential conflicts with other utilities.
8 (2) The number of times and extent of disruption
9 to rights-of-way.
10 (3) The technical or physical limitations of
11 rights-of-way, poles, and compatible
12 easements.
13 (4) The extent of existing development in the
14 areas.
15 (5) The inconvenience to the public, including
16 vehicular travel, from disruptions to
17 rights-of-way and property.

18 (D) In evaluating the potential benefit or harm to the public
19 and Subscribers resulting from economic scarcity, the Board of County
20 Commissioners may consider:

- 21 (1) The extent and type of overbuild existing and
22 proposed by the Applicant.
23 (2) The financial information and assumptions of
24 the Applicant.
25 (3) The various effects of the various forms of
26 competition in the cable industry; including
27 the costs of duplication of facilities and
28 equipment, Services, personnel, etc.
29 (4) The extent to which overbuilds have
30 historically survived.
31 (5) The extent to which diverse information will
32 be promoted.
33 (6) The extent to which existing Cable Operators
34 are meeting the community needs and interests
35 and the manner and extent to which the

Applicant proposes to meet community needs and interests.

(E) In evaluating the ability of the County to regulate multiple Franchises, the Board of County Commissioners may consider:

(1) The extent and type of overbuild existing and proposed by the Applicant.

(2) The permitting processes of the County.

(3) The functions of the Cable Coordinator's office.

(4) The ability to readily determine the owner of Facilities And Equipment.

(5) The ability to locate facilities and equipment.

(6) The extent of conflicts of utility and cable Installations.

(F) Franchise Area. (1) The Applicant shall submit information for the Board of County Commissioners to determine whether the size of the requested Franchise is in the public interest. The following shall be addressed:

(a) The size of the area requested relative to the technical, fiscal, and legal qualifications of the Applicant, as set forth above.

(b) The potential for development in the near future for the various areas requested.

(c) The extent to which existing operators have installed facilities and equipment in the area.

(2) The Board of County Commissioners may consider the above information and all other information set forth in this Article VII and other relevant information in determining whether the size of the area requested is in the public interest.

(G) Assistance of Cable TV Coordinator. It shall be the responsibility of the Applicant to furnish any and all reasonably

1 available information relating to existing Service and Cable Operators.
2 The Cable Coordinator shall assist the Applicant in obtaining any such
3 information from the Cable Coordinator's files. The Cable Coordinator
4 shall confirm the information of existing Cable Operators with the
5 information in the Cable Coordinator's files. It shall be the
6 responsibility of the Applicant to compile the information in a form
7 acceptable for presentation to the Board of County Commissioners.

8 Section 4. Scope and Contents.

9 This Ordinance should not be construed to prescribe the detail
10 in which an Applicant shall make its presentation nor in any way to
11 restrict the scope of its presentation. It is intended, however, to set
12 forth the minimum standard that an application should meet for
13 consideration by the Board of County Commissioners. Applicants have wide
14 latitude to formulate their proposals in an innovative fashion.
15 Applicants are expected to propose a modern, efficient, cost-effective
16 system which will facilitate quality maintenance practices, deliver a
17 variety of marketable Services, and provide the flexibility needed to
18 adjust to changing technology and new developments in the industry. The
19 following matters, however must be carefully covered and in such detail
20 that the County can make fully informed judgments concerning the adequacy
21 of the proposal and Applicant's legal, character, financial, technical
22 and other qualifications to construct and operate a cable communications
23 system in Palm Beach County. The Cable Coordinator may promulgate forms
24 to be used by Applicants.

25 Section 5. Legal Qualifications.

26 (A) Identification of Applicant. Provide name, address and
27 telephone number of Applicant; and name, address and telephone number of
28 the principal or his representative to whom inquiries should be made.

29 (B) Ownership Information.

30 (1) If a corporation, provide identification and ownership
31 interests for all officers and directors, and stockholders owning five
32 percent (5%) or more of any of Applicant's voting-class stock or
33 non-voting equity or debt which may be convertible to voting stock; and
34 state of incorporation.

1 (2) If a corporation, provide the following stock information:
2 classes of stock, par value, votes per share, number of shares
3 authorized, number of shares issued, number of shares subscribed, and
4 total number of stockholders, including convertible stock information.
5 If there are any assignments of voting rights or intended assignment of
6 voting rights which confer upon any shareholder or group of shareholders
7 five percent (5%) or more of the votes in any voting-class of stock,
8 furnish full details and attach copies of documents evidencing the same.
9 If there are shares which are not entitled to vote, furnish
10 identification of stockholders holding twenty percent (20%) or more of
11 any class of such stock.

12 (3) If a partnership, provide identification and ownership
13 interest for all general partners and limited partners holding a
14 twenty-five percent (25%) interest or more;

15 (4) If a proprietorship, joint venture or other entity,
16 provide full identification and ownership details in accordance with the
17 percentages set forth above.

18 (C) Ownership. Of any Persons listed in (B) above, provide
19 the following information for each such owner:

20 (1) Basis for Acquiring Ownership. Indicate whether ownership
21 or the holding was acquired at same per-share cost as other owners,
22 whether Services or other in-kind contributions are included as a basis
23 for acquiring ownership.

24 (2) Buy Out Agreement. Indicate whether a buy out agreement
25 exists, whether written or verbal, giving other stockholders, Persons or
26 entities the right to acquire the interest of local stockholders in the
27 future; submit copy of agreements.

28 (3) Ownership In Other Communications Media. Indicate whether
29 any owners hold ownership in other communications media (defined as
30 television station, radio stations, newspapers, or phone Services)
31 serving or having significant circulation or Service in Palm Beach
32 County.

33 (4) Documentary Records. Submit copies of all partnership,
34 management, and joint venture agreements which involve the participation
35 of local ownership as herein defined.

1 (5) Local Ownership Participation In Management. Detail the
2 role local investors (investors whose permanent residence is in or around
3 Palm Beach County) will have in the decision(s) of Applicant relative to
4 operational and programming policies and procedures.

5 (D) Affiliates, Subscribers And Parent Companies. Provide
6 full identification and ownership details, as in (B) above, for all
7 Affiliates, subsidiaries and parent companies of Applicant. If any of
8 these are publicly owned, the requirements of this paragraph may be
9 satisfied by furnishing a copy of the latest audited Annual Report.

10 (E) Arrangements. Provide full disclosure of all agreements,
11 arrangements, and assumptions made by the Applicant directly related to
12 the (1) provision of Cable Services, (2) construction, Installation,
13 maintenance, operation, and repair of the Facilities And Equipment, (3)
14 performance under the terms of this Ordinance (including all
15 representations made by the Applicant in the Application Process).

16 Section 6. Character Qualifications.

17 The past or current involvement of the Applicant, any of its
18 principals, or managers as a party in criminal or civil proceedings is
19 relevant to evaluation of an Applicant's character qualifications.
20 Applicant shall supply all records as deemed necessary by the application
21 review staff, the Cable Board, or the Board of County Commissioners.

22 (A) Criminal Proceedings. Advise whether Applicant (including
23 parent corporation if applicable), any principal, or manager has ever
24 been found guilty in a criminal proceeding (felonies or misdemeanors) in
25 which any of the following offenses have been charged: fraud,
26 embezzlement, tax evasion, bribery, extortion, jury tampering,
27 obstruction of justice (or other misconduct affecting public or judicial
28 officers in the performance of their official duties), false/misleading
29 advertising, perjury, antitrust Violations (State or Federal), Violations
30 of FCC regulations or conspiracy to commit any of the foregoing. If
31 "yes" in any instance(s), provide specifics such as date, court, sentence
32 or fine, etc.

33 (B) Civil Proceedings. Advise if Applicant, any principal, or
34 manager or any Cable Operator of which any principal or manager was or is
35 a principal or manager has ever been a party to a civil proceeding in

which he or it was held liable for any of the following, or is now a party to any such proceedings: unfair or anticompetitive business practice, antitrust Violations (State and Federal) including instances in which consent decrees were entered, Violations of securities laws (State and Federal), false/misleading advertising Violations of FCC regulations, racketeer influenced and corrupt organizations, or contraband forfeitures. If "yes" in any instance(s), provide specifics.

(C) Franchise Violations. Advise if Applicant, any principal, manager or any Cable Operator of which any principal or manager was or is or has ever been subject to any penalty, criminal or civil, involving failure to comply with the requirements of a cable television Franchise. If yes, provide specifics.

(D) Legal Action Against Franchisor. Advise if Applicant, any principal, or manager or any Cable Operator of which any principal or manager was or is a principal or manager has ever instituted legal action against its franchising authorities. If yes, describe action and result.

(E) Revocation Of Licenses. Advise if Applicant, any principal, manager, or any Cable Operator of which any principal or manager was or is a principal or manager has ever had a business License (defined to include FCC Licenses, alcoholic beverage and restaurant Licenses, etc.) revoked, suspended or renewal denied, or is a party to a proceeding which may result in same. If yes, provide specifics.

(F) Information as to other Cable Systems owned by or Affiliated with the Applicant, the principals, or managers, including:

- (1)(a) The location of the system.
- (2)(b) Whether Franchised.
- (3)(c) Officials or employees who may be contacted regarding the Applicant and principals.
- (4)(d) Size of the system.
- (5)(e) Extent of buildout.
- (6)(f) Density requirements of Franchising Authority and extent to which Applicant or principals exceed such.
- (7)(g) System characteristics, type of Service (cable and otherwise).
- (8)(h) Years Franchised or otherwise operating, and when system built.

1 (9)(i) Market penetration.

2 (G) Management Information. Provide information on the
3 management structure of the Applicant, including all levels of management
4 of multiple system operators and the relationship of the proposed cable
5 operator to its Affiliates.

6 Section 7. Financial Qualifications And Pro Forma Financial Statements.

7 (A) Financial Plan. Describe in detail the financing plan for
8 the construction and initial operation of the proposed cable
9 communications system and provide proof of financial capability. Proof
10 of financial capability shall include:

11 (1) A showing of sources and amount of equity capital; if
12 equity contribution is borrowed, describe collateral and terms of the
13 loan.

14 (2) A showing of sources and amount of debt capital--both
15 primary and secondary.

16 (3) Terms of Financing.

17 (B) Documentation.

18 (1) Supply documentation that demonstrates and assures
19 Applicant's financial viability, such as letters of commitment from
20 financial institutions which demonstrate the availability of sufficient
21 funds to complete construction of the proposed system. Commitments
22 conditional on the obtaining of the Franchise are acceptable.

23 (2) If Applicant is a multiple system operator, give evidence
24 of the portion of the company's sources of financing which is uncommitted
25 and will be applied to the proposed construction.

26 (3) State the amount of equity contribution, plus the method
27 by which the contribution is paid (e.g. cash, cash plus credit, Services,
28 etc.) Include financial commitment documentation for each investor.

29 (4) If Applicant is a division or subsidiary of a multiple
30 system operator, provide the proposed debt instrument describing terms of
31 payment, or other documentation showing funds committed to the Applicant.

32 (5) If capital is to be raised or supplied by a parent
33 company, provide an Annual Report for the parent company.

1 (6) Describe sources and documentation evidencing debt
2 financing.

3 (C) Pro Forma Financial Statements.

4 (1) Pro forma financial statements are required for a minimum
5 of five (5) years beginning with the date the License agreement is
6 accepted, projected annually through the year Applicant anticipates that
7 all financing obligations and debt will have been retired. Such pro
8 formas shall include income statements supported by realistic levels of
9 Subscriber penetration including the source of the information and basis
10 for projection. Sources and uses of funds, loan amortization
11 information, anticipated capital expenditures, construction costs,
12 depreciation schedules, and operating expenses, shall be provided and the
13 basic assumptions relied upon shall be detailed to support its
14 projections. The information and assumptions shall include financial
15 aspects of miles of plant to be built and type of Installation
16 (aerial/underground), building schedule, headends, other capital
17 investments and planned coverage; debt, debt equity ratio, debt Service
18 costs; depreciation; operating costs in detail; assumed market
19 penetration rate; expected internal rate of return; discuss fixed and
20 variable costs, and such other relevant information as the County or its
21 officers, employees, agents, or contractors deems appropriate.

22 (2) The financial plan and financial statements should cover
23 the Palm Beach County activity for which the application is made separate
24 and distinct from the total cable company operation. It should contain a
25 clear statement of operation, profit and loss statement, cash flow, cost
26 and revenue dates, financial goals, and other considerations which affect
27 financial operations.

28 (3) Specifically the application should indicate the
29 profitability of the cable television system proposed in terms of
30 penetration, miles of systems planned to be installed, and specific areas
31 where the penetration is to occur, presented in terms of a five (5) year
32 projection from the probable date the License would be awarded if the
33 application were approved by the Board of County Commissioners.

1 (D) If the Applicant is an existing entity, a certified annual
2 report for the last two (2) years shall be submitted, or if existing for
3 less than two (2) years, for such period of existence.

4 Section 8. Technical Qualifications.

5 Describe any qualifications and Cable System experience
6 Applicant may have had, including but not limited to, the ownership,
7 construction, management, and operation of other cable communications
8 systems specifying the manner in which Applicant participated; available
9 Personnel with technical qualifications and experience committed to the
10 proposed system design, construction and operation; construction
11 contractors to be used, if any; technical consultants, if any. Indicate
12 the type of participation and the qualifications of Persons, consultants,
13 contractors, etc. whose Services will be utilized.

14 Section 9. System Design - Layout And Equipment.

15 The County seeks a comprehensive but concise description of the
16 proposed system design. The design features referenced in this
17 subsection should not be construed to be requirements of the County.
18 However, each should be addressed by the Applicant in order to clearly
19 reflect Applicant's design philosophy as well as the features planned and
20 not planned.

21 (A) System Configuration. Briefly describe the type of layout
22 that will be used to provide coverage to the Franchised territory. The
23 description should be in the following form, at a minimum:

24 "hub system, linked by AML, radial trunk
25 layout using a remote headend
26 interconnected by super trunk,
27 dual-trunk, dual-feeder, separate
28 Institutional Network (if any) utilizing
29 450 MHZ equipment."

30 The above description is an example only; it is not intended to
31 set forth a minimum system design or technical standard.

32 (B) Distribution Plant. Describe distribution system
33 equipment including manufacturer, type and model numbers (aerial and
34 underground including drops), active electronics including power supplies
35 and standby power systems, and passive electronics.

1 (C) Converters. Describe the need for and proposed use of
2 converters including an explanation of the conditions under which
3 converters will be furnished.

4 (D) Transmission Services. Describe plans for the use of
5 transmission Services in the common carrier, cable television relay
6 (CARS), multipoint distribution and other bands.

7 (E) Satellite Earth Stations. Describe plans for the use of
8 satellite earth station(s) including specifications including the
9 authority and approvals pursuant to which such earth stations will be
10 placed.

11 (F) Pay Cable And Tier Isolation, And Security. Describe
12 design specification for the delivery of pay cable television including
13 methods of security. If more than one basic tier is to be provided,
14 indicate how higher tier Subscribers will be isolated from the lower
15 tier.

16 (G) Headend Design. Describe headend design and reception
17 facilities including, make and model numbers of antennas, signal
18 processors, modulators, demodulators, FM processors and status monitoring
19 systems. Indicate whether signal studies or measurement programs have
20 been undertaken in selecting the headend sites(s).

21 (H) Spectrum Utilization. Furnish a summary spectrum
22 utilization chart.

23 (I) Specialized Services. Describe any other headend and/or
24 Subscriber terminal equipment that will be or may be installed for
25 pay-per-view Service, other interactive Services, text display, home
26 security, etc. Give full details of immediate and long term plans
27 including arrangements actually made.

28 (J) Emergency Override System. Provide make and model number,
29 and describe how the system will work, how the system would be activated
30 and from where.

31 (K) Automated Channels. Describe equipment to be used for
32 programming any automated Channels including make and model numbers.

33 Section 10. System Design - Channel Capacity.

34 (A) Subscriber Network. Indicate the frequency spectrum,
35 Channel capacity, and Channel capacity initially to be activated for

1 downstream Service; and the frequency spectrum, Channel capacity and
2 extent to which upstream capacity will be activated from Subscribers. If
3 no upstream Subscriber activation is now planned, when and under what
4 circumstances would it be activated. Justify the capacities proposed for
5 both upstream and downstream use in terms of projected Service demand.

6 (B) Institutional Network. If institutional Services are
7 proposed provide information for such Channels or network as in (A)
8 above, and describe the plans in detail including the institutional users
9 to be served. Provide a proposed set of rules and regulations governing
10 use of the institutional facilities.

11 (C) Expansion Capability. Discuss Channel expansion
12 capability in respect to both the short-term and long-term, including
13 specific reference to the degree of flexibility available for adapting
14 the system to increasing or changing capacity requirements.

15 Section 11. System Design-Interconnection.

16 Applicants shall be fully cognizant of the potential need and
17 requirement for interconnection with other broadband cable communications
18 systems both within and outside the County for an Institutional Network
19 and for Public, Educational, and Government Access programming. Initial
20 design shall make provision for such interconnection. Include a
21 statement detailing how the Applicant will ensure such interconnection
22 capability with other cable communications systems. Interconnection
23 shall be made upon six (6) month's County notice.

24 Section 12. Technical Standards.

25 List the key system technical performance standards which will
26 be met by the proposed Cable System, including but not limited to carrier
27 to noise ratio, composite triple beat and cross modulation
28 specifications. Provide the calculations supporting these specifications
29 associated with the transmission paths described in (A), (B), and (C)
30 following. All supporting calculations shall be related to full loading
31 of unmodulated television signals. Any enhancements such as HRC
32 Channelization; synchronous carriers of FM video modulation shall be
33 separately stated.

34 (A) Worst-case satellite received signal to the most distant
35 Subscriber, including distribution system and super trunk effects.

(B) Worst-case off air signal to most distant Subscriber, including distribution and super trunk effects.

(C) Worst-case most distant institutional originators to most distant Subscriber, including upstream path distribution system and longest super trunk effects.

(D) Amplifier Cascade. Indicate the number of amplifiers, number of miles and type of cable in the longest amplifier cascade in the proposed Cable System.

(E) The application need not exceed the standards established by the Federal Communications Commission.

Section 13. Level of Services.

(A) Cable. Cable Services and Other Services which will be immediately available and those proposed; setting forth under what circumstances the proposed Services will be made available.

(B) Policies related to Outages.

(C) Policy on system maintenance.

(D) Methods of addressing consumer complaints.

(E) Method of record keeping.

(F) Number of Personnel, agents, or contractors and duties, and circumstances under which additional Personnel, agents, or contractors will be added.

ARTICLE VIII. REVIEW OF APPLICATION.

Section 1. Information.

The Cable Coordinator shall, upon request of the Applicant, provide the Applicant with information and application forms, if any, regarding the Franchise Application Process.

Section 2. Cable Coordinator and Cable Board Review.

Upon the Applicant's submitting an application for a Franchise, the Cable Coordinator shall review the application and, within twenty-five (25) days, notify the Applicant as to any facial deficiencies. When a complete and sufficient application has been submitted, the Cable Coordinator shall notify the Applicant when the application will be reviewed by the Cable Board. The application shall be reviewed by the Cable Board within twenty (20) days of receipt of such notice. Within five (5) days of receipt of an application, the Cable

1 Coordinator shall notify all Cable Operators of the pending application.
2 Cable operators shall be notified of the Cable Board meeting. The cable
3 operator, interested Persons, and the public shall be entitled to attend
4 the meeting at which the Cable Board reviews the application, and may
5 submit relevant objections and information.

6 Section 3. Additional Information.

7 The Cable Board shall review the application to ensure that
8 full information is submitted to the Board of County Commissioners in its
9 consideration of the request for a Franchise. The Cable Board may
10 request additional information of the Applicant. The Cable Board shall
11 not require additional information (except as may be required for
12 clarification of information submitted by the Applicant) beyond that set
13 forth in Article VII without Board of County Commission approval. The
14 approval or requirement by the Board of County Commissioners for
15 additional information by the Board of County Commissioners shall not
16 require a public hearing.

17 Section 4. Completeness of Application.

18 The Cable Board shall approve, reject as incomplete or
19 deficient, or approve with conditions the application. Upon approval or,
20 if approved with conditions, upon the conditions being met, the Cable
21 Coordinator shall notify the Clerk of the Board of County Commissioners
22 to advertise the public hearing at which the Board of County
23 Commissioners will consider the application. The advertisement shall be
24 published by the Clerk of the Board of County Commissioners in a
25 newspaper of general circulation in Palm Beach County once weekly for two
26 consecutive weeks not more than twenty-one (21) days, nor less than five
27 (5) days, prior to the public hearing. The Cable Coordinator shall
28 promptly notify all Cable Operators of the public hearing. Written
29 notice shall be sent to Cable Operators holding a Franchise and License
30 within the geographic area for which the Applicant is seeking a
31 Franchise. The public hearing shall be commenced within thirty (30) days
32 of the date of the approval, or if approved with conditions within thirty
33 (30) days of the date the conditions are met, of the Cable Board. The
34 Cable Board's approval shall not be construed as a final approval. Said
35 approval is only as to the technical completeness of the application
36 only.

1 Section 5. Summary Report.

2 The Cable Board shall issue or cause to be issued a report
3 summarizing the application. This report shall contain areas of
4 particular noteworthiness, if any. It shall be presented to the Board of
5 County Commissioners. The Cable Board shall make a recommendation to the
6 Board of County Commissioners as to approval, denial, or approval with
7 conditions.

8 ARTICLE IX. BOARD OF COUNTY COMMISSIONER'S CONSIDERATION

9 Section 1. Consideration by Board of County Commissioners.

10 (A) The Board of County Commissioners shall consider the
11 information and criteria set forth in Article VII, and any other
12 information it deems appropriate in determining whether to award a
13 Franchise. In the event multiple applications are filed for the same
14 license territory, the applicable criteria may be evaluated on a
15 comparative basis. The information, criteria, and standards set forth in
16 or required by this Ordinance relating to the awarding of Franchises are
17 solely to assist the Board of County Commissioners in evaluating
18 applications, and nothing in this Ordinance relating to the awarding of
19 Franchises shall be deemed to be binding upon the Board of County
20 Commissioners or to effect a quasi-judicial or administrative
21 decision-making process; and it is declared that the awarding of
22 Franchises is strictly legislative. While the Board of County
23 Commissioners must have before it all information set forth in Article
24 VII in determining whether to award a Franchise, and while all
25 applications shall meet the applicable criteria and standards, failure of
26 the Board of County Commissioners to consider such information and
27 criteria and standards shall not vitiate the Board of County
28 Commissioner's action.

29 (B) Nothing in this ordinance or otherwise shall be construed
30 as effecting a right of Cable Operators or Applicants to have
31 applications considered by the Board of County Commissioners or County
32 Personnel under the criteria, standards, or information set forth in this
33 Article VII or otherwise.

1 Section 2. Additional Information, Consultant.

2 The Board of County Commissioners may continue or postpone the
3 public hearing as it deems appropriate. It may request additional
4 information of the Applicant, Cable Operators or officers and employees
5 of Palm Beach County. The applicant may submit studies, reports, or
6 opinions addressing the need for an additional Cable Operator, the
7 economic effect of an additional Cable Operator, or other appropriate
8 matters.

9 The Board of County Commissioners may obtain a consultant to
10 perform studies and reviews and the Applicant shall be responsible for
11 the cost thereof, which shall be paid in advance of the Board of County
12 Commissioner's consideration of the application. It may reject the
13 application, deny the request, award the Franchise with or without
14 conditions, and may award a Franchise for only a portion of the area
15 requested. The Board of County Commissioners shall not unreasonably
16 withhold ultimate consideration of the application. No Franchise may be
17 awarded for a term which exceeds fifteen (15) years.

18 ARTICLE X. ISSUANCE OF LICENSE

19 Section 1. License Required.

20 Any rights which may be conferred upon an Applicant awarded a
21 Franchise hereunder shall not be effective until a License has been
22 issued by the Cable Coordinator. Said License shall not be issued until
23 all conditions precedent to its issuance established by this Ordinance,
24 the awarding resolution, or otherwise, by the Board of County
25 Commissioners.

26 Section 2. Conditions Precedent.

27 Failure to affirmatively and conclusively demonstrate to the
28 Cable Coordinator that all such conditions precedent have been met within
29 three (3) months of Board of County Commission approval shall render the
30 Board of County Commissioner's approval void and of no further force and
31 effect, unless otherwise directed by the Board of County Commissioners.

1 Section 3. Franchise Acceptance Agreement.

2 The Franchisee shall execute a "Franchise Acceptance
3 Agreement", as follows:

4 FRANCHISE ACCEPTANCE AGREEMENT

5 This agreement made this _____ day of _____, 19____
6 by and between the Board of County Commissioners of Palm
7 Beach County, Florida, as Franchising Authority,
8 hereinafter referred to as "County", and _____
9 name
10 _____
11 type of entity

12 and authorized to do business in the State of Florida,
13 hereinafter referred to as "Franchisee" or "Cable Operator".

14 WHEREAS, the Board of County Commissioners acts as
15 Franchising Authority for the franchising of cable television
16 operations in Palm Beach County; and

17 WHEREAS, the Cable Operator applied for, and was awarded, by
18 Resolution No. R-_____, a Franchise to provide cable
19 television Related Services in Palm Beach County.

20 W I T N E S S E T H

21 For and in consideration of the mutual terms, conditions,
22 covenants and representations herein contained and
23 incorporated by reference, the County and Franchisee hereby
24 agree as follows:

25 1. The County shall not unlawfully interfere with the
26 operations of the Cable Operator for so long as the cable
27 operator is duly Franchised and Licensed as a Cable Operator
28 under Ordinance No. _____, as amended; and is in
29 compliance with said Ordinance and all government laws,
30 ordinances, rules and regulations.

31 2. The Franchisee shall comply with all terms, conditions,
32 and provisions of said Ordinance, Resolution No.
33 R-_____, requirements of the Board of County
34 Commissioners and County officers and employees pursuant to
35 said Ordinance or Resolution, and all rules, regulations, and
36 policies of the County.

1 3. The Franchisee shall comply with, and fully and
2 faithfully perform all material representations made in the
3 Application Process, as set forth in Article _____ of said
4 Ordinance.

5 4. The provisions of said Ordinance and said Resolution,
6 the transcript of the representations made to the Board of
7 County Commissioners, and the application of Franchisee are
8 hereby incorporated by reference as if set forth fully
9 herein, and are made binding upon and accepted by the
10 Franchisee.

11 5. Times for performance of the Cable Operator set forth in
12 the Ordinance or pursuant to the representations of the cable
13 operator in the Application Process are of the essence.

14 Section 4. Other Agreements.

15 The Board of County Commissioners may require such other
16 agreements of the Franchisee or others as it deems appropriate to carry
17 out the provisions of this Ordinance, or ensure compliance or performance
18 by the Franchisee or others.

19 ARTICLE XI. CHANGES IN OWNERSHIP AND/OR CONTROL.

20 The restrictions, requirements, and procedures contained in
21 this Article apply equally whether the transaction proposed is an
22 assignment of the Cable Operator's Franchise and License to a separate
23 legal entity or a transfer of control of the Cable Operator resulting
24 from changes in voting interests or the leasing of the Cable System. The
25 terms "assignor" and "assignee", and "lessor" and "lessee", respectively,
26 should be used in lieu of "transferor" and "transferee" as used herein if
27 the transaction proposed is an assignment or lease of License or
28 Franchise.

29 Section 1. Prior Consent Required.

30 Any Franchise approval and License granted hereunder shall be a
31 privilege to be held by the Cable Operator for the benefit of the public.
32 Said Franchise and License cannot under any circumstances be assigned,
33 nor the control thereof transferred as set forth herein, by any means
34 whatsoever including but not limited to, voluntary or involuntary sale,
35 merger, consolidation, foreclosure, receivership, or other means without

1 the prior written consent of the Board of County Commissioners, and then
2 only under such conditions and to the extent as the Board of County
3 Commisioners may establish. Such consent shall not be unreasonably
4 withheld.

5 Section 2. Control.

6 (A) The word "control" as used herein is not limited to
7 majority stock ownership, or controlling partners, but includes acutal
8 working control in whatever manner exercised. A rebuttable presumption
9 that a transfer of control has occurred or will occur shall arise upon
10 the acquisition by any Person or group of Persons of ten percent (10%) of
11 the issued voting shares of the Cable Operator unless a single and the
12 same Person or group of Persons holds more than fifty percent (50%) of
13 the voting interests both before and after the transfer. A rebuttable
14 presumption that a transfer of control has occurred or will occur shall
15 arise when a change in a general partner occurred or will occur. Any
16 leasing of the Cable System, or portion thereof, shall be presumptive a
17 transfer of control. The term "control" as used herein shall not
18 include:

19 (1) Leases of Channels pursuant to Sections
20 611 and 612 of the Act of 1984.

21 (2) A pledge, hypothecation, or mortgage or similar
22 instrument transferring conditional ownership of all or
23 part of the Cable Operator's assets within the Franchise
24 area to a lender or creditor in the ordinary course of
25 business so long as the lender does not thereby acquire
26 the right to control the Cable Operator's operation, but
27 no such transfer of conditional title can be made absolute
28 without prior approval of the County; or

29 (3) The disposition of facilities or equipment no longer
30 required in the conduct of the business.

31 (B) For purposes of this Section "group of Persons" shall
32 include Persons who by agreement, whether oral or written, act in concert
33 for purposes of exercising control over the Cable Operator. It shall not
34 include proxy agreements in publicity held corporations. It shall
35 include all immediate members of a family.

1 (C) For purposes of this Section, the establishment of a
2 management agreement whereby the responsibility for the operation of the
3 system is transferred in its entirety to an entity unaffiliated with the
4 Cable Operator shall be considered a transfer of control under this
5 Section.

6 Section 3. Bankruptcy/Foreclosure Pleadings, Intervention.

7 Upon the filing of an action for bankruptcy, foreclosure, or
8 the appointment of a receiver, by or against the Cable Operator, the
9 Cable Operator shall forthwith send a copy of the initial and all
10 subsequent pleadings to the Cable Coordinator. The Board of County
11 Commissioners shall have the right to intervene in any such action, and
12 any mortgage or pledge of the Cable Operator which could have the effect
13 of transferring control shall set forth this right to intervene. Whether
14 the Board of County Commissioners intervenes or not, any involuntary
15 transfer shall require the consent of the Board of County Commissioners.

16 Section 4. Application(s) For Consent.

17 (A) Transferor And Transferee Must File. Whenever the cable
18 operator desires to effect a transfer of control of the Cable Operator,
19 or whenever an involuntary transfer as set forth in this Section may
20 occur, the transferor and the proposed transferee shall each make
21 application for consent to transfer of control or assignment of the
22 Franchise and License to the Board of County Commissioners. Such
23 applications must be signed; if a corporation, by an officer authorized
24 to sign for the purpose; if a partnership, by a general partner; if a
25 proprietorship or joint venture, by a responsible principal, and shall be
26 filed in the office of the Cable Coordinator. The transferor and
27 transferee shall be notified of the meetings at which the Cable Board and
28 Board of County Commissioners will consider the proposed transfer.

29 (B) The application for transfer shall be accompanied by a one
30 thousand dollar (\$1,000.00) fee to defray the County's cost of processing
31 the application.

32 (C) In addition to the fee set forth in Paragraph (A) above,
33 the Applicant shall be responsible to pay the cost of any and all
34 consultants, experts, accountants, attorneys, or other Person utilized by
35 the County to assist the County in its evaluation of the application.

1 Said costs shall be paid by the Applicant prior to final consideration of
2 the request by the Board of County Commissioners.

3 Section 5. Transferor's (Assignee's) Application.

4 In its application for consent transferor shall:

5 (A) Identification And Ownership Of Transferee. Identify the
6 transferee and its ownership in the same detail as if transferee were an
7 Applicant for an initial grant;

8 (B) Qualifications Of Transferee. Execute an affidavit that
9 it has satisfied itself by due diligence that the proposed transferee has
10 the requisite legal, character, financial, technical and other
11 qualifications to hold a License for and operate a cable communications
12 system in Palm Beach County under the criteria set forth in Article VII
13 hereof;

14 (C) Circumstances Motivating Proposed Transfer. Provide a
15 concise but complete statement of the circumstances motivating and/or
16 giving rise to the proposed transfer or assignment.

17 (D) Financial Statements. Current financial statements
18 showing the financial condition of the transferor as of the date of the
19 application. Transferor shall also agree to submit financial statement
20 showing the financial condition of transferor as of the closing. Said
21 financial statement shall be submitted within ninety (90) days of the
22 closing. Financial statements shall be audited and certified by an
23 independent certified public accountant, or, at the option of the
24 transferor, the books and records shall be made available to the County
25 for a period of one (1) year following the date of the transfer approval.
26 Said books and records shall be held by the transferee for the one (1)
27 year following the date of the transfer approval.

28 (E) Public Benefit. A summary statement as to why the public
29 convenience, safety and general welfare would be served by a grant of the
30 application(s) for consent.

31 (F) The transferor shall submit a final accounting and report
32 of Franchise fees set forth in Article XII within ninety (90) days of
33 Board of County Commission approval. If the books and records of the
34 transferor are not made available to the County as set forth in Paragraph
35 (D), above, the final accounting shall be prepared and in accordance with

1 Generally Accepted Accounting Principles and certified by a Certified
2 Public Accountant. The transferee shall be responsible for any
3 underpayment, and shall be entitled to a credit for any overpayment.

4 Section 6. Transferee's (Assignee's) Application.

5 In its application for consent, proposed transferee shall:

6 (A) Affirm that the identification and ownership
7 representations of transferor are true and correct.

8 (B) Provide a specific and complete responses to the criteria
9 set forth in Article VII, Section 3(c), 4, 5, 6, 7, 8, 9 (if different or
10 to be modified), 10 (if different or to be modified, 11, 12 (if different
11 or to be modified). The application must be as complete as if the
12 transferee were applying for an initial Franchise.

13 (C) Provide current financial statements of proposed
14 transferee and such other information and data, including but not limited
15 to sources of capital, as will demonstrate conclusively that transferee
16 has all the financial resources necessary to acquire the cable
17 communications system, carry out all of the terms and conditions of the
18 License, remedy any and all defaults and Violations of the provisions of
19 this Ordinance and the subject License in the transferor's past and
20 present operations, make such other improvements and additions as may be
21 required or proposed in the Services and facilities, including but not
22 limited to, upgrading, rebuilds, and extentions of facilities and
23 equipment.

24 (D) Provide a concise but complete summary of its technical
25 qualifications to comply with the terms and conditions of this Ordinance,
26 the representations made by the transferor in the initial application
27 process, and the License, including but not limited to, a listing of the
28 other cable communications systems which it has designed, constructed,
29 operated and/or managed, available Personnel, and testing equipment.

30 (E) A precise and complete statement of changes, if any, in
31 the terms and conditions of the representations made by the transferor in
32 the Application Process and the License agreement, which it desires or
33 requires in order to fulfill all of its representations made in the
34 Application Process and commitments. No changes in the terms and
35 conditions of the License agreement of which the Board of County

1 Commissioners was not advised and which were not requested prior to the
2 date of the grant will be considered by the Board of County Commissioners
3 subsequent to the grant except pursuant to Section 625 of the Act.

4 (F) A statement of any changes in rates and charges which
5 transferee proposes to make during the first three (3) years following
6 approval of the transfer or assignment.

7 (G) A concise statement of why the public convenience, safety
8 and general welfare would be served by approval of its application.

9 (H) Acceptance Of Terms And Conditions. A statement detailing
10 the commitment of the transferee to abide by all of the terms and
11 conditions of the existing License.

12 (I) Commitment To Remedy Defaults. A summary of the plans and
13 commitments, if any, of the transferee to remedy specific defaults and
14 Violations in the operations of the Cable Operator (transferor) under the
15 existing License.

16 Section 7. Procedure.

17 (A) The Cable Coordinator shall, upon the request of the
18 Applicant, provide the Applicant transferor or transferee with
19 information regarding the transfer process.

20 (B) Upon the Applicant transferor and transferee submitting an
21 application for transfer, the Cable Coordinator shall review the
22 applications as to any deficiencies and notify the transferor and
23 transferee of the date that the application will be reviewed by the cable
24 board. Within twenty (20) days of the receipt of a complete application
25 addressing the requirements of this Article, the application shall be
26 reviewed by the Cable Board.

27 (C) The Cable Board shall review the transfer applications to
28 ensure that full information is submitted to the Board of County
29 Commissioners in its consideration of the request for a transfer. The
30 Cable Board may request additional information of the Applicants. The
31 Cable Board shall not require additional information (except information
32 to clarify what the Applicants have submitted) beyond that set forth in
33 this Article without Board of County Commission approval.

1 (D)(1) Subject to the approval of the Board of County
2 Commissioners, the Cable Board may waive in whole or in part, the
3 transfer application requirements for good cause shown and as the Board
4 of County Commissioners may reasonably deem appropriate in serving the
5 public interest. In determining whether the transfer application
6 requirements should be waived, the extent or nature of the transfer shall
7 be considered.

8 (2) Such waiver shall not prohibit the Board of County
9 Commissioners from requiring a full application for transfer as a result
10 of information or concerns coming to its attention in the application
11 process.

12 (E) The Cable Board shall approve, reject as incomplete, or
13 approve with conditions the form and content of the applications. Upon
14 approval, or if approved with conditions upon the conditions being met,
15 the Cable Coordinator shall schedule the proposed transfer for Board of
16 County Commission consideration. Cable operators shall be notified of
17 the meeting at which the Board of County Commissioners will consider the
18 proposed transfer. The transfer shall be approved or denied only in a
19 public hearing which shall have been advertised by the Clerk of the Board
20 of County Commissioners in a newspaper of general circulation once weekly
21 for two consecutive weeks not more than twenty-one (21) days, nor less
22 than five (5) days, prior to the public hearing. The public hearing
23 shall be commenced within thirty (30) days of the date of the approval,
24 or if approved with conditions within thirty (30) days of the date the
25 conditions are met, of the Cable Board. The Cable Board's approval shall
26 not be construed as a final approval. Said approval is only as to the
27 technical completeness of the application only.

28 Section 8. Material Representations.

29 All representations made by the proposed transferee in its
30 application for consent and representations made in the application
31 process and to the Board of County Commissioners shall be considered to
32 have been made for the purpose of inducing County to approve its
33 application, and shall be binding upon the transferee to the same extent
34 as, and for the same reasons as, the representations in the initial
35 Application Process.

1 Section 9. Consent Not A Waiver.

2 The consent of the County to any transfer of control or
3 assignment of a License shall not constitute a waiver or release of any
4 of the rights of the County reserved herein or which it has at law. Any
5 consent by the County shall be construed to subject the transferee to all
6 of the terms and conditions of the original License, provided however,
7 that the Board of County Commissioners in its sole discretion, upon
8 written request by the proposed transferee accompanied by a satisfactory
9 supporting statement made prior to final action on the application for
10 consent, may modify the License as may appear appropriate to the public
11 interest.

12 Section 10. Substantial Completion Required.

13 In the absence of extraordinary circumstances, the County will
14 not approve any transfer or assignment of the License prior to
15 substantial completion of construction of the proposed system, unless
16 assurances, commitments, agreements, or Performance Security satisfactory
17 to the Board of County Commissioners are made to substantially complete
18 construction.

19 Section 11. Fee And Forfeiture.

20 No application for consent to assignment or transfer of control
21 of a License will be granted until all fees, damages, penalties, and
22 forfeitures due the County hereunder have been paid, and all lawful
23 claims which the County may have against the transferor have been
24 settled.

25 Section 12. Acceptance By Transferee.

26 No assignment or transfer of control shall be effective until
27 the new Cable Operator has become a signatory to the License. In
28 accepting the transfer and License, the transferee thereby agrees to
29 assume all obligations and liabilities of the transferor to the County,
30 public, and Subscribers unless otherwise specifically and explicitly
31 waived by the Board of County Commissioners.

32 Section 13. Receivership and Foreclosure.

33 (A) Notwithstanding, and in addition to, the Board of County
34 Commissioner's right to intervene as set forth herein, any Franchise and
35 License herein granted shall, at the option of the Board of County

1 Commissioners, cease and terminate one hundred twenty (120) days after
2 the appointment of a receiver(s) or trustee(s) to take over and conduct
3 the business of the Cable Operator whether in a receivership,
4 reorganization, bankruptcy or other action or proceeding unless such
5 receivership or trusteeship shall have been vacated prior to the
6 expiration of said one hundred twenty (120) days, or unless:

7 (1) Such receivers or trustees shall have, within one hundred
8 twenty (120) days after their election or appointment, fully complied
9 with all the terms and provisions of this Ordinance and the Franchise and
10 License granted pursuant hereto, and the receivers or trustees within
11 said one hundred twenty (120) days shall have remedied all defaults under
12 this Ordinance and the License; and

13 (2) Such receivers or trustees shall, within said one hundred
14 twenty (120) days, execute an agreement duly approved by the court having
15 jurisdiction in the premises, whereby such receivers or trustees assume
16 and agree to be bound by each and every term, provision and limitation of
17 this Ordinance, the representations made by the Cable Operator in the
18 Application Process, and the License.

19 (B) Notwithstanding, and in addition to, the Board of County
20 Commissioner's right to intervene set forth herein, in the case of a
21 foreclosure or other judicial sale of the property and facilities and
22 equipment of the Cable Operator, or any part thereof, the Board of County
23 Commissioners may serve notice of termination upon the Cable Operator and
24 the successful bidder at such sale, in which event the Franchise and
25 License and all rights and privileges of the Cable Operator hereunder
26 shall cease and terminate thirty (30) days after Service of such notice,
27 unless:

28 (1) The Board of County Commissioners shall have approved the
29 transfer of the License, as and in the manner set forth in this
30 Ordinance; and

31 (2) Such successful bidder shall have covenanted and agreed
32 with the County to assume and be bound by all the terms and conditions of
33 this Ordinance, the representations made by the Cable Operator made in
34 the Application Process, and the License.

1 Section 14. Effect on Pole Attachment Agreements.

2 Pole attachment agreements shall not be affected by action
3 under this Article XI.

4 Section 15. Transfer Application Fee.

5 (A) The application for transfer both voluntary and
6 involuntary shall be accompanied by a fee of One Thousand Dollars
7 (\$1,000.00). The transferor and transferee shall be jointly and
8 severally liable for any and all direct and indirect costs incurred by
9 the County in reviewing the application for transfer.

10 (B) In addition to the fee set forth in Paragraph (A) above,
11 the Applicant shall be responsible to pay the cost of any and all
12 consultants, experts, accountants, attorneys, or other person utilized by
13 the County to assist the County in its evaluation of the application.
14 Said costs shall be paid by the Applicant prior to final consideration of
15 the request by the Board of County Commissioners.

16 Section 16. Transfer to Overlapping Franchisee.

17 Except as provided by the Board of County Commissioners, should
18 a transfer of a Franchise and License to a Franchisee holding a Franchise
19 which overlaps in whole or in part the Franchise area of the transferor,
20 the earlier expiring Franchise shall be surrendered and hereby shall be
21 of no further force and effect, to the extent of the overlap. A new
22 license shall be issued covering the entire new franchise area, the term
23 of which shall be commensurate with the latest expiring franchise.

24 Section 17. Purchase of Existing System.

25 The Cable Operator shall notify the Cable Coordinator prior to
26 any purchase of a SMATV system.

27 ARTICLE XII. FEES

28 Section 1. Payment To The Grantor Of Franchise Consideration.

29 For the reason that the streets and other facilities of the
30 County to be used by the Cable Operator in the operation of the cable
31 system within the boundaries of the Franchise area are valuable public
32 properties acquired and maintained by the County at the expense of its
33 taxpayers, and that the grant to the Cable Operator to use said streets
34 and facilities as herein provided is a valuable property right without
35 which the Cable Operator would be required to invest substantial capital

1 in rights-of-way costs and acquisitions, and as consideration for the use
2 of said streets and other facilities of the County for the cable
3 operator's purposes herein provided, and to compensate the County for
4 foregoing its rights to provide the franchised service itself; and to
5 defray the expense of (1) regulating Cable Operators, (2) administering
6 this Ordinance, and (3) matters associated with this Ordinance; and to
7 pay for the cost of the County's funding the establishment and operation
8 of Public, Educational and Government Access Channels, any Cable Operator
9 shall pay to the County a Franchise fee of four percentum (4%) of its
10 gross annual revenues for each year of the term of the Franchise. The
11 portion of the fee set forth herein for Public, Educational and
12 Government Access Channels shall not be construed as a Public,
13 Educational, and Government Access channel fee restricted in its use to
14 capital costs by the Act. Said Franchise fee shall be in addition to all
15 other taxes, fees, and assessments which are required to be paid to the
16 County, and which do not constitute a Franchise fee under the Cable
17 Communications Policy Act of 1984. Said Franchise fee may be increased
18 to the maximum amount permitted by law, including fees for capital costs
19 associated with Public, Educational and Government services, as the Board
20 of County Commissioners deems appropriate.

21 Section 2. Time Of Payment.

22 (A) Payment shall be due within ninety (90) days after the
23 close of the Fiscal Period. Adjustments shall be made, if any, as a
24 result of the report required under Article XIII, Section 2, and a
25 surcharge made in accordance with Section 2(B) hereof, if an underpayment
26 to the County has occurred.

27 (B) No acceptance of any payment shall be construed as an
28 accord that the amount paid is, in fact, the correct amount, nor shall
29 such acceptance of payment be construed as a release of any claim the
30 County may have for further or additional sums. All amounts paid shall
31 be subject to audit and recomputation by the County and, for this
32 purpose, all financial records relating to annual Gross Revenue, whether
33 directly or indirectly, of Cable Operator for Palm Beach County Franchise
34 areas shall be open for review and inspection by County upon reasonable

1 notice to the Cable Operator. In addition, if such recomputation results
2 in additional revenues to be paid to the County, such amount shall be
3 subject to a surcharge calculated in accordance with the effective
4 compound interest rate on six (6) month Treasury Bills as of the date of
5 recomputation

6 (C) Nothing in this Section shall limit Cable Operator's
7 liability to pay other local taxes, fees, charges, or assessments to
8 County and other taxing and governmental authorities.

9 (D) The consideration schedule shall become operative upon the
10 date of Board of County Commission awarding the Franchise.

11 (E) In the event that any payment is not made within ten (10)
12 days after the ninety (90) day period fixed in Section 2(A), compound
13 interest on such payment shall apply from such date at the prime rate of
14 interest as established by the Federal Reserve Board at the time the
15 ninety (90) day period expires.

16 (F) Prepayment of fees shall be reduced to present value using
17 a per annum interest rate two percentum (2%) below the prime rate of
18 interest as established by the Federal Reserve Board at the time the
19 ninety (90) day period expires.

20 ARTICLE XIII. AUDIT/RECORDS.

21 Section 1. Books/Records, Access.

22 The Cable Operator shall maintain proper books of record and
23 account (separate from all other records and accounts) in which complete
24 and correct entries shall be made of its transactions, with adequate
25 accounting and administrative controls, all in accordance with Generally
26 Accepted Accounting Principles (GAAP) as promulgated by the American
27 Institute of Certified Public Accountants. The accounts established to
28 comply with the provisions of this Ordinance; and all other books and
29 papers of the Cable Operator, shall, to the extent permitted by law, at
30 all times be subject to the inspection and audit of the County and its
31 representatives duly authorized in writing. Upon reasonable notice, the
32 Cable Operator shall permit the County and its authorized employees,
33 agents, auditors, attorneys and counsel, at all reasonable times and to
34 the extent permitted by law, to take copies and extracts from the books

1 of record and account, and will from time to time furnish, or cause to be
2 furnished, to the County such information and statements as the County
3 may reasonably request, all as may be deemed reasonably necessary for the
4 purpose of determining performance or observation by the County of the
5 covenants, conditions and obligations contained in this Ordinance, and
6 the representations of the Cable Operator in the Application Process.

7 Section 2. Report to County.

8 The Cable Operator shall submit to the Cable Coordinator a
9 statement audited and certified by a responsible officer of the Cable
10 Operator or Certified Public Accountant prepared in accordance with GAAP
11 reflecting the total amount and sources of gross revenue and all
12 payments, deductions, and computations for the period covered by the
13 payment, all as required under this ordinance. The report shall be
14 submitted within ninety (90) days of the close of each fiscal period.
15 The first such report shall be submitted not later than fifteen (15)
16 months after the start of operations. Such report shall deal exclusively
17 with the cable television Services rendered under the Franchise within
18 the Franchise area. The report shall be prepared in accordance with GAAP
19 and shall be sufficient in scope to allow a Certified Public Accountant
20 to issue an opinion regarding the cable operator's compliance with the
21 fee-requirements of the Ordinance. The Cable Coordinator or internal
22 auditor may require an Annual Report showing at least income, assets,
23 liabilities, and net worth computed in accordance with GAAP. If the
24 statements/reports required in this are not certified by a Certified
25 Public Accountant, the Board of County Commissioners, at its discretion,
26 may require an audit by an independent Certified Public Accountant, not
27 in the regular employment of the Cable Operator, subject to the approval
28 of the County, the cost of which shall be borne by the Cable Operator if
29 said audit reveals that Gross Revenues are under-represented by more than
30 five percent (5%).

31 Section 3. Expense to Get Books.

32 If any of such books or records required by the County are not
33 kept in the local office, upon reasonable request they shall be obtained
34 and made available to the County in the local office. If Cable Operator

1 shall fail to obtain books or records not kept in the local office, and
2 if the County shall determine that an examination of such records is
3 necessary or appropriate to the performance of any of the County's
4 duties, then all travel and maintenance expenses necessarily incurred in
5 making such examination shall be paid by the Cable Operator.

6 Section 4. Other Requirements.

7 The Cable Operator shall keep complete and accurate books of
8 accounts and records of its business and operations under and in
9 connection with the Franchise, and such applicable rules and regulations
10 of the State of Florida and the FCC.

11 Section 5. County Access to Records.

12 Upon reasonable notice, and to the extent permitted by law, the
13 County shall have access at all normal business hours to all of the cable
14 operators plans, contracts, engineering, accounting, financial,
15 statistical, customer Service, or other records relating to the property
16 and operations of the system by the Cable Operator and to such other
17 records as may be required by the County.

18 Section 6. False Entry.

19 Any intentional or grossly negligent false entry in the books,
20 accounts, or records of the Cable Operator, or false statement in the
21 reports to the County, as to a material fact made by the Cable Operator,
22 shall constitute a breach of a material provision of this Ordinance.

23 Section 7. Copies of Official Communications and Reports.

24 Upon the Cable Coordinator establishing and providing to the
25 Cable Operator a list of what documents shall be submitted by the cable
26 operator, the Cable Operator shall submit to the County copies of all
27 documents set forth on said list. The list may include, but not be
28 limited to, pleadings, applications, reports, communications and
29 documents of any kind, submitted by the Cable Operator to any federal,
30 state, and local courts, regulatory agencies and other government bodies
31 relating to its cable television operations within the Franchise or
32 License area as well as copies of all decisions, correspondence and
33 actions by such courts, agencies, and boards. The list of documents to
34 be submitted may be changed by the Cable Coordinator at any time. Cable

1 operator shall submit such documents to the County concurrently with
2 their submission to such courts, agencies, and boards promptly after
3 their receipt from such courts, agencies, and boards. Documents and data
4 determined to be confidential by law or by the practices of federal or
5 state agencies and exempt from public disclosure shall be retained in
6 confidence by the County and its authorized agents and shall not be made
7 available for public inspection, except as provided by Florida Statutes,
8 Chapter 119.

9 ARTICLE XIV. PERMIT REQUIRED

10 Section 1. Compatible Easements

11 (A) No facilities or equipment may be installed outside of the
12 Cable Operator's Franchise area, and the Cable Operator shall not offer
13 or provide Service to Persons outside of the Franchise area.

14 (B) It shall be the responsibility of the Cable Operator to
15 obtain all necessary written permits and approvals of governmental
16 agencies and Easement Holders prior to beginning Installation. It shall
17 be the responsibility of the Cable Operator to coordinate the proposed
18 Installation with all governmental agencies, Easement Holders and
19 beneficiaries, and any Persons holding an interest in the property where
20 the Installation is proposed. It shall be the responsibility of the
21 Cable Operator to determine any conflicts of its proposed Installation
22 with the facilities or equipment of other Easement Holders or
23 beneficiaries. The Cable Operator shall join and maintain a continuous
24 membership in U.N.C.L.E. and use its Services prior to each Installation.
25 Only certified contractors may be utilized for the Installation.

26 (C) The Cable Operator shall comply with provisions of Section
27 621(a)(2) of the Cable Communications Policy Act of 1984.

28 (D) The Installations in compatible easements shall be in
29 accordance with the National Electric Code. The pedestals and amplifiers
30 installed or worked on by the Cable Operator after the effective date of
31 this Ordinance shall be marked by the Cable Operator with the name of the
32 Cable Operator. All pedestals and amplifiers of the Cable Operator shall
33 be marked within eighteen (18) months after the effective date of this
34 ordinance.

1 (E) Within thirty (30) days of the completion of any
2 Installation in compatible easements, the Cable Operator shall furnish to
3 the Cable Coordinator a set of as-built plans of the Installation.

4 Section 2. Rights-of-Way.

5 (A) The Cable Operator shall utilize the Services of
6 U.N.C.L.E. on each proposed Installation prior to submittal of the
7 application relating to the use of rights-of-way. Only certified
8 contractors shall be used for the Installation. All Installations in
9 rights-of-way shall be performed in accordance with the Florida
10 Department of Transportation Manual of Uniform Minimum Standards for
11 Design, Construction and Maintenance for Streets and Highways.

12 (B) Prior to the Installation of any facilities or equipment
13 in any right-of-way under County jurisdiction pursuant to Florida
14 Statutes, Section 334.03(6) and Chapter 335, which is within the limits
15 of a municipality which has exercised Franchising Authority as set forth
16 in Article III of this Ordinance, or which is necessary for a cable
17 operator Franchised by a municipality to serve municipal Subscribers, the
18 Cable Operator shall apply to the appropriate office of the County
19 Engineer for a permit. The permit application shall be processed in
20 accordance with Ordinance 76-2, as amended or replaced.

21 (C) Where the Facilities And Equipment to be installed will
22 function with, or as a part of, the Cable System over which the County
23 has jurisdiction as Franchising Authority, the Cable Operator shall give
24 prior notice to the Cable Coordinator of the proposed Installation. For
25 any crossing of a right-of-way in the unincorporated area of the County
26 by which a municipally Franchised Cable Operator will serve no
27 Subscribers in (1) the unincorporated area or (2) an area inside of the
28 limits of a municipality where the County has jurisdiction as franchising
29 authority pursuant to Article III, the municipally Franchised cable
30 operator shall not be required to obtain a County Franchise, but shall be
31 required to obtain a permit under this Paragraph (b).

32 C. County right-of-way within Franchise area.

33 (1) Applicability. Prior to the Installation of any facilities
34 or equipment in any right-of-way under County jurisdiction pursuant to
35 Florida Statutes, Section 334.03(6) and Chapter 335, by which the cable

1 operator will serve Subscribers in the unincorporated area or within such
2 limits as are subject to County jurisdiction as Franchising Authority
3 pursuant to Article III of this Ordinance, the Cable Operator shall apply
4 to the Cable Coordinator for a permit.

5 (2) Cable Coordinator/County Engineer. The Cable Coordinator
6 shall determine whether the Cable Operator holds a County Franchise in
7 the area to which the application applies. This shall be determined
8 within five (5) days, except where deficiencies in the application cause
9 delay, or except for good cause. Upon a determination that the cable
10 operator holds a County Franchise in the area to which the application
11 applies, the Cable Coordinator shall send the application to the County
12 Engineer. The County Engineer shall review the plans and specifications
13 to determine whether the proposed Installation meets County standards
14 both with respect to the Installation and the method of Installation.
15 Where a right-of-way not under the sole control and jurisdiction of the
16 County is involved, the Cable Operator shall forward the application
17 (additional plans) to the appropriate governmental entity for approval.

18 (3) Obligation. The Cable Operator shall be responsible for
19 obtaining all necessary governmental and private approvals. County
20 Personnel shall not be responsible for submitting information to the
21 Cable Operator to ensure all such approvals are obtained.

22 (4) County Engineer Review. The County Engineer shall review
23 the application within ten (10) days and determine whether the proposed
24 Installation and the method of Installation meet all requirements. If
25 all requirements are met, he shall forward the plans showing his approval
26 to the Cable Coordinator for issuance of the permit. If the application,
27 the proposed Installation, or the method of Installation is unacceptable,
28 the Applicant shall be notified either by the County Engineer or the
29 Cable Coordinator of the deficiencies within ten (10) days of the receipt
30 of the application. Once the application is in order in all respects,
31 the County Engineer shall complete his review within ten (10) days. If a
32 bridge attachment is involved, the County Engineer shall complete his
33 review of the plans and specifications within twenty (20) days of receipt
34 of an application which is in order in all respects. It shall be the
35 obligation of the Applicant to determine the status and location of the

1 application. Reasonable permit conditions relating to the Installation
2 and method of Installation may be imposed by the County Engineer and/or
3 the Cable Coordinator. Questions on the permit application shall be
4 directed to the Cable Coordinator.

5 (5) Inspection. The Cable Coordinator shall inspect the
6 Installation and method of Installation to ensure conformity within the
7 plans and specifications and permit. The Cable Coordinator shall notify
8 the County Engineer and Cable Operator when the Installation is complete.
9 Any deviations from the approved plans and specifications shall be a
10 notation as to the reason therefor. Substantial deviations shall require
11 the approval of the County Engineer and the Cable Coordinator.

12 (6) Contact for Inspection. It shall be the responsibility of
13 the Applicant and Cable Operator to coordinate the inspection with the
14 Cable Coordinator. The Cable Coordinator shall be contacted at least
15 twenty-four (24) hours in advance of a requested inspection. The Cable
16 Operator or Applicant shall backfill all open ditches overnight, and open
17 such up for inspection as required by the Cable Coordinator or County
18 Engineer in accordance with the policy established. Any ditches shall be
19 open at intervals established by policy of the Cable Coordinator or the
20 County Engineer. Any installation under a paved surface shall be left
21 open at the edge of pavement, provided it shall be backfilled overnight.
22 The Manual on Traffic Control and Safe Practices promulgated by the
23 Florida Department of Transportation shall be followed.

24 (7) Application. The Application submitted shall contain, at
25 a minimum, the following:

- 26 (a) The name and address of the Cable Operator.
- 27 (b) The name, address and phone number of the Applicant.
- 28 (c) Four sets of plans signed by the preparer

29 showing:

- 30 (i) the general area of the
- 31 Installation.
- 32 (ii) the specific area of
- 33 the Installation.
- 34 (iii) pavement edge.
- 35 (iv) right-of-way line.

- 1 (d) Statements as to the method of Installations. Jack and
- 2 boring and conduit is required under all paved public
- 3 rights-of-way. Said conduit shall extend a minimum of
- 4 five feet (5') past the pavement edge, unless
- 5 right-of-way is not available except where
- 6 permitted otherwise by the County Engineer.
- 7 Cable shall be a minimum of twenty-four inches (24")
- 8 deep in right-of-ways.
- 9 (e) Statements as to the method of restoration.
- 10 (f) The plans shall show any conflicts with other
- 11 Installations, if known prior to Installation.
- 12 (g) The name of the subcontractor or employee supervising
- 13 the Installation and his State or County contractor's
- 14 License number.
- 15 (8) No establishment of rights. The issuance of a permit
- 16 hereunder is nothing more than a County approval as to the authority
- 17 under the Franchise, the Installation, and the method of Installation.
- 18 Nothing in this Ordinance shall be construed as conferring a right upon
- 19 the Applicant or Cable Operator nor shall it be deemed a warranty of the
- 20 Cable Operators right to effect the Installation or utilize the easement.
- 21 Nothing herein shall be construed as impairing the rights of third
- 22 parties as against the Cable Operator.

23 Section 3. Fees.

24 The Cable Operator shall pay at the time the application is

25 submitted, the following fees:

- | | | |
|--------|-------------------------------------|-----------------------|
| 26 (1) | Installation in easements dedicated | |
| 27 | for compatible use. | No charge |
| 28 (2) | Installation in County right-of-way | <u>As established</u> |
| 29 | within the franchising area of a | <u>by Ordinance</u> |
| 30 | municipality. | <u>No. 76-2, as</u> |
| 31 | | <u>amended or</u> |
| 32 | | <u>superceded.</u> |
| 33 (3) | Installation in County right-of-way | <u>As established</u> |
| 34 | within the franchising area of the | <u>by Ordinance</u> |
| 35 | County. | <u>No. 76-2, as</u> |
| 36 | | <u>amended or</u> |
| 37 | | <u>superceded.</u> |

1 Section 4. Responsibility.

2 The Cable Operator shall be responsible and liable for all
3 claims of any nature, including claims for alleged Personal injury
4 (including wrongful death), arising from the Cable Operator's use of any
5 easement or right-of-way or any other property, whether or not such use
6 is properly permitted. The Cable Operator shall indemnify, save
7 harmless, and defend Palm Beach County, its officers, employees, and
8 agents against any and all claims of whatever nature resulting from the
9 Installation of Facilities And Equipment, or the use of any easement or
10 right-of-way. Said indemnification shall include any and all costs,
11 expenses, and reasonable attorneys' fees

12 Section 5. Duration.

13 The approved Installation shall be commenced within ninety (90)
14 days of issuance of the permit, and diligently prosecuted to completion.
15 Road cuts, if permitted at all, shall be done, closed, and restored in
16 accordance with the directive or requirements of the County Engineer or
17 Cable Coordinator. The Cable Operator shall, at its own expense, and in
18 a manner approved by the County, promptly restore and repair to the
19 County's satisfaction any damage, disturbance, or failure caused to a
20 Public Right-Of-Way as a result of Cable Operator's operations or
21 construction on its behalf.

22 Section 6. Tree Trimming.

23 The Cable Operator shall not remove any tree or trim any
24 portion, either above, at or below ground level, of any tree within any
25 Public Right-Of-Way or Easement Dedicated For Compatible Use, unless the
26 terms of such provide otherwise, except as is necessary for the
27 construction, maintenance and repair of the Cable System's facilities and
28 equipment. The Cable Operator shall be responsible, shall defend and
29 hold County harmless for any and all damages to any tree as a result of
30 trimming, or to the property in the area of any tree, whether such tree
31 is trimmed or removed.

32 Section 7. Good Engineering Practices.

33 All plant and equipment, including but not limited to the
34 antenna sites, towers, headend and distribution system, Subscriber
35 terminals, structures, poles, wire, cable, coaxial cable, fixtures and

1 appurtenances shall be installed, located erected, constructed,
2 reconstructed, replaced, removed, repaired, maintained and operated in
3 accordance with good engineering practices, performed by experienced
4 maintenance and certified construction Personnel so as not to interfere
5 with or unnecessarily hinder or obstruct pedestrian or vehicular traffic,
6 endanger the public safety or interfere with the rights of property
7 owners.

8 Section 8. Public Safety Requirements.

9 The Cable Operator shall at all times employ due care and shall
10 install and maintain in use commonly accepted methods and devices for
11 preventing failures and accidents which might cause damage, injury, or
12 nuisance to the public or Persons.

13 Section 9. Compliance with Construction and Other Codes.

14 (A) County Codes and Permits. Cable operator shall comply
15 with all applicable County land use and construction codes and permit
16 procedures. It shall be Cable Operator's responsibility to be cognizant
17 of any such applicable codes.

18 (B) Safety Codes. All construction practices shall be in
19 accordance with all applicable sections of the Occupational Safety and
20 Health Act of 1970, and any amendments thereto, as well as all state and
21 local codes where applicable.

22 (C) Electrical Codes. All Installation of electronic and
23 electrical equipment shall be a permanent nature, durable and installed
24 in accordance with the provisions of the National Electrical Code
25 promulgated by the National Fire Protection Association as amended, and
26 all applicable state and local codes.

27 (D) Antennas and Towers. Antenna supporting structures
28 (towers) shall be designed for the proper loading as specified in The
29 Standard Building Code, as amended.

30 (E) Compliance with Aviation Requirements. Antenna supporting
31 structures (towers) shall be painted, lighted, erected and maintained in
32 accordance with all applicable rules and regulations of the Federal
33 Aviation Administration and all other applicable, federal, state or local
34 codes and regulations.

1 Section 10. Previous Installations.

2 Within six (6) months of the effective date of this Ordinance,
3 the Cable Operator shall file with the Cable Coordinator a map showing
4 the specific location of all Facilities And Equipment located within Palm
5 Beach County, except those areas not under the County's jurisdiction as
6 Franchising Authority; provided, however, if a certified set of as-builts
7 have been provided the County pursuant to the provisions of this
8 Ordinance (not pursuant to any other Ordinance, or otherwise), no map
9 need be filed for that area covered by such permit.

10 Section 11. Service Drops.

11 No permits shall be required for individual Service drops; the
12 Services of U.N.C.L.E. need not be used for Service drop Installations.

13 The following standards shall apply to individual drops:

14 (A) The Cable Operator shall utilize only
15 certified contractors to install cable
16 and to wire the structure, or have in his
17 employ a certified contractor to
18 supervise the Installation.

19 (B) All necessary permits and approvals shall
20 be received prior to Installation.

21 (C) The drop shall be installed at least
22 twelve inches (12") below the existing
23 grade (final grade if done during
24 construction of the structure).

25 (D) All work on Service drops, including the
26 work within the structure, if any, shall
27 be in accordance with the National
28 Electric Code, as may be amended from
29 time to time by the Board of County
30 Commissioners.

31 Section 12. Rules of Cable Coordinator.

32 The Cable Coordinator or County Engineer shall have the
33 authority to adopt rules and regulations relating to the Installation of

1 Facilities And Equipment which are not inconsistent with the standards
2 set forth in this ordinance and any other laws or regulations. Prior to
3 the adoption of such rules and regulations notice shall be sent to the
4 Cable Operators and they shall be given an opportunity to respond.

5 ARTICLE XV. CABLE BOARD

6 Section 1. Cable Board.

7 There is hereby created a Cable Board consisting of the Cable
8 Coordinator, an employee of the Cable Coordinator having
9 inspection/technical responsibilities, a representative from the County
10 Attorney's Office, and a representative of Consumer Affairs. Any
11 interested Commissioner attending shall be an ad hoc voting member.

12 Section 2. Duties.

13 (A) The Cable Board shall review all applications for initial
14 Franchises, renewals, and transfers, except as may be provided in this
15 Ordinance or by Board of County Commissioners directive.

16 (B) The Cable Board shall hold meetings to determine whether
17 there has been non-compliance by a Cable Operator. It shall be
18 responsible for recommendations to the Board of County Commissioners on
19 the application of liquidated damages schedule set forth in Article XX.
20 It may also make recommendations to the Commissioners relating to further
21 or other sanctions for non-compliance. At the request of the Cable
22 Coordinator, it may review the performance of a Cable Operator and make
23 recommendations on how to effect better performance and what measures
24 should be taken by a Cable Operator to cure non-compliance.

25 (C) At the request of the Cable Coordinator it may advise the
26 Cable Coordinator on the adoption of rules and regulations.

27 (D) The Cable Board shall have all other powers and duties as
28 implied herein and as are necessary to effectively administer the
29 provisions of this Ordinance.

30 Section 3. Procedure.

31 The Cable Coordinator shall call meetings of the Cable Board.
32 The Cable Coordinator shall notify the affected Cable Operators of the
33 meeting hour, date, and place; and the reason therefor. If the meeting

1 is called for purposes of addressing noncompliance, notice to the
2 affected Cable Operator shall be in writing and specify the
3 non-compliance. The Cable Operator may attend and may be represented by
4 counsel. The Cable Board meeting shall be open to the public, and any
5 interested Person may provide relevant input and/or information. The
6 Cable Coordinator shall act as Chair to the meeting. The meeting shall
7 be audio-tape recorded.

8 Section 4. Transcript/Report to the Board of County Commissioners.

9 Determinations of the Cable Board relating to non-compliance or
10 non-performance shall be forwarded to the Board of County Commissioners
11 for its action. The Cable Coordinator shall prepare and forward to the
12 Board of County Commissioners a verbatim transcript of the Cable Board
13 meeting relating to non-performance or non-compliance. County Personnel
14 and others may submit additional information or recommendation(s) to the
15 Board of County Commissioners. The Cable Coordinator shall notify the
16 affected Person(s) and other Persons requesting notification of the date
17 of consideration by the Board of County Commissioners. The Board of
18 County Commissioners action shall be final County action.

19 Section 5. Acceptance of Recommendation.

20 The affected Cable Operator may accept the recommendation of
21 the Cable Board relating to non-compliance or non-performance. Should
22 the Cable Operator not accept the recommendation of the Cable Board, the
23 matter shall be scheduled for consideration by the Board of County
24 Commissioners as set forth in Section 4. Should the Cable Operator
25 accept the recommendation of the Cable Board, the Cable Coordinator shall
26 notify the affected Person(s) and the members of the Board of County
27 Commissioners of the Cable Operators desire. Should nobody bring the
28 accepted recommendation of the Cable Board before the Board of County
29 Commissioners within thirty (30) days, the recommendation of the cable
30 board shall be final County action and binding upon the Cable Operator,
31 which shall submit to the recommended sanctions, if any.

32 Section 6. Appeal of Final Action.

33 Final County action may be appealed to a court of competent
34 jurisdiction. Unless the Cable Operator accepts the assessment of

1 liquidated damages by the Board of County Commissioners, any collection
2 of liquidated damages shall be made through a court of competent
3 jurisdiction.

4 ARTICLE XVI. SCHEDULE/STANDARDS

5 Section 1. Strand Mile Density.

6 (A) Unless a more stringent standard is provided by the Board
7 of County Commissioners or by the representations of the Cable Operator
8 during the Application Process any Cable Operator (including those
9 receiving their Franchises prior to November 2, 1984) shall be required
10 to extend its distribution facilities and provide Service in any area
11 within the Franchise territory where there exists thirty five (35) units
12 which have received a certificate of occupancy from the Building Official
13 for each strand-mile of cable extension required or portion thereof. In
14 the case of overlapping Franchises, the Cable Operator having the headend
15 closest, or, if the amp cascade is sufficient to accommodate the
16 extension, the Cable Operator having the nearest trunk line, to the
17 unserved area meeting the density requirements shall be primarily
18 responsible for providing Service. All other Cable Operators holding a
19 Franchise for the unserved areas shall be secondarily responsible for
20 providing Service. The proximity of the headend shall be determined by
21 measuring the distance of rights-of-way and compatible easements which
22 could be utilized for the Facilities And Equipment to provide Service.
23 Now Cable Operators receiving an initial award or expansion shall have
24 three (3) years from the date of the award to substantially complete
25 construction and provide Service in the newly acquired area.

26 (B) The Cable Operator shall not be responsible for providing
27 Service in those areas meeting the density requirements herein or the
28 representations of the Cable Operator in the Application Process if (1)
29 the Cable Operator is precluded by the property owner, instrument of
30 record, or contract from providing Cable Services or constructing and
31 installing Facilities And Equipment, (2) another Cable Operator is
32 providing Cable Services, or (3) a SMATV operator is providing Cable
33 Services to the development.

1 (C) Nothing herein shall preclude the Cable Operator from
2 charging for the Installation of Facilities And Equipment to provide
3 Service to Subscribers requesting such where the strand-mile density is
4 less than thirty-five (35) units, as set forth in Paragraph (A), provided
5 that when Subscribers are added by utilizing the Facilities And Equipment
6 for which the requesting Subscribers were charged, the requesting
7 Subscribers shall be reimbursed based upon an equitable arrangement made
8 at the time of the original extension for the requesting Subscribers.

9 Section 2. Waiver

10 Subject to review and approval by the Board of County
11 Commissioners, the Cable Board may issue waivers to the density
12 requirements set forth in this Article XVI for good cause shown.
13 Affected Person(s) shall be given notice of the Cable Board and Board of
14 County Commissioner's meeting at which the matter of waiver will be
15 considered. Notice shall be by the posting of signs in the affected
16 area. The signs shall be furnished by the Cable Operator in a form
17 acceptable to the Cable Coordinator and shall be posted by the Cable
18 Coordinator.

19 Section 3. Compliance.

20 The Cable Operator shall comply with the more restrictive
21 requirements of the construction schedules contained in this Ordinance,
22 the Board of County Commissioner's resolution awarding the Franchise, or
23 the representations made by the Cable Operator during the application
24 process or otherwise.

25 Section 4. Progress Reports Required.

26 Semi-annually the Cable Operator shall furnish County a
27 construction progress report. The Cable Coordinator may establish by
28 rule or regulation a format for this report.

29 Section 5. Geographical Coverage.

30 The Cable Operator shall design and construct the distribution
31 plant in such manner that when completed it will pass all single-family
32 dwelling units, multiple-family dwelling units, schools and properties
33 owned and occupied by public agencies within the License territory within
34 the area meeting the density requirements provided herein.

1 Section 6. Underground.

2 In those areas and portions of the Franchise area where the
3 transmission or distribution facilities of both the public utility
4 providing telephone Service and those of the utility providing electrical
5 Services are underground or hereafter may be placed underground, then the
6 Cable Operator shall likewise construct, operate and maintain all of its
7 transmission and distribution facilities underground. As transmission
8 and distribution lines of the utilities are converted from overhead to
9 underground Installations within the Franchise area, the Cable Operator's
10 transmission and distribution system shall also be so converted. The
11 Installation of new poles will require specific approval of the County.
12 All Installations shall be in accordance with the National Electric Code,
13 as may be amended from time to time by the Board of County Commissioners.

14 Section 7. Relocation.

15 (A) (1) No Provisions Of This Ordinance or otherwise shall be
16 construed to prevent or otherwise limit the County from constructing,
17 relocating, or repairing, water or sewer lines, streets or other public
18 improvements even though it may interfere or conflict with the cable
19 operator's facilities and Services. Where relocation of the cable
20 operator's facilities is necessary to accommodate County's Installations
21 or those of utilities, the decision of the County as to such relocation
22 shall be binding.

23 (2) Upon receipt of reasonable advance written notice, the
24 Cable Operator will be required to proceed immediately with the
25 relocation of the Cable Operator's cable and related equipment, either
26 temporarily or permanently as required by the County during the
27 construction of a facility owned or operated by County. The actual cost
28 of any such relocation shall be borne by the Cable Operator. No notice
29 need be sent where the Cable Operator has not filed the required map or
30 received a permit for the particular Installation affected as required in
31 Article XIV.

32 (B) Nothing herein shall be construed to limit the authority
33 of the Cable Operator to charge for the permanent relocation of
34 Facilities And Equipment requested by a private Person for private

1 purposes. The charge for such relocation shall not exceed the actual
2 cost plus ten percent (10%).

3 Section 8. Temporary Removal of Wires for Building, Moving and Other
4 Purposes.

5 Upon receipt of ten (10) days notice from the County or a
6 Person in receipt of a permit to move a structure or for other purposes,
7 the Cable Operator shall temporarily relocate its cables or equipment to
8 permit or facilitate the moving of buildings or structures or for other
9 purposes, provided necessary permits have been procured by the owner or
10 agents of such buildings or structures. Cable operator shall charge no
11 more than the actual cost plus ten percent (10%) of such temporary
12 removal when the removal is requested by a party other than the County or
13 other governmental agency. Advance payments may be required by the cable
14 operator.

15 Section 9. Restoration of Public Ways.

16 Cable operator shall, at its own expense, and in a manner
17 approved by the County, promptly restore or repair to County's
18 satisfaction any damage, disturbance, or failure caused to a public
19 right-of-way as a result of Cable Operator's relocation.

20 Section 10. Public Disaster - Removal.

21 Whenever, in case of fire or other disaster, it becomes
22 necessary in the judgment of the responsible officials of the County to
23 remove any of the Cable Operator's facilities, no charge shall be made by
24 the Cable Operator against County, any of its officials, agencies,
25 employees, or departments for restoration and repair.

26 Section 11. Rectification.

27 County reserves the right at any time during the term of a
28 License granted hereunder to require and, after reasonable written
29 notice, Cable Operator to make such corrections, modifications, removals,
30 relocations or repairs as County, in its reasonable discretion, shall
31 find necessary to assure compliance with the terms of this Ordinance, the
32 resolution approving the award of the Franchise or expansion or
33 representations of the Cable Operator, or any applicable code, law, or
34 regulation.

1 Section 12. Relocation of Facilities.

2 Any cable communications system facilities or any nature
3 whatsoever, heretofore or hereafter placed upon, over or under the public
4 way that is found by the County to be interfering in any way with public
5 convenience, safety, or the maintenance, continuous use of the public
6 ways, or inhibiting or interfering with improvements thereto, shall upon
7 ten (10) days written notice to Cable Operator, be removed or relocated
8 at Cable Operator's expense.

9 Section 13. Interference with Public Works.

10 Upon reasonable notice the Cable Operator, at its expense,
11 shall protect, support, temporarily disconnect, relocate, or remove any
12 property of Cable Operator when, in the opinion of the County the same is
13 required by reason of (1) traffic conditions, public safety, street
14 repair or relocation, or freeway or street grade Installation; (2) repair
15 or removal of sewers, drains, waterpipes, utility and communications
16 lines, transportation facilities, tracks, or any general program under
17 which the County shall undertake to cause any such properties to be
18 located beneath the surface of the ground and any other improvements by
19 governmental agencies whether acting in a governmental or a proprietary
20 capacity, or (3) any other construction or public improvement, including
21 but not limited to movement of buildings and redevelopment. Action taken
22 pursuant to this section shall not be deemed a taking of the property of
23 Cable Operator; and Cable Operator shall be entitled to no surcharge by
24 reason of anything under this section.

25 Section 14. Failure to Perform Required Work.

26 Upon failure of Cable Operator to commence, pursue or complete
27 any work required by law or by the provisions of this Ordinance to be
28 done in any public way within the time prescribed and to the satisfaction
29 of the County, the County may, at its option, cause such work to be done;
30 and the Cable Operator shall pay to the County the itemized direct cost
31 within forty five (45) days after receipt of an itemized demand by
32 County.

1 ARTICLE XVII. RENEWAL

2 Section 1. Section 626 Renewal.

3 (A) During the six (6) month period which begins with the
4 thirty sixth (36th) month before the Franchise expiration, the County may
5 on its own initiative, and shall at the request of the Cable Operator,
6 commence proceedings which afford the public in the Franchise area
7 appropriate notice and participation for the purpose of:

8 (1) Identifying the future cable-related community needs and
9 interests; and

10 (2) Reviewing the performance of the Cable Operator under the
11 Franchise during the then current Franchise term.

12 (B) (1) Upon completion of a proceeding under subsection (A),
13 a Cable Operator seeking renewal of a Franchise may, on its own
14 initiative or at the request of the County, submit a proposal for
15 renewal.

16 (2) Subject to Section 624 of the Act, any such proposal shall
17 contain such material as the County may require, including proposals for
18 an upgrade of the Cable System.

19 (3) The County may establish a date by which such proposal
20 shall be submitted.

21 (C) (1) Upon submittal by a Cable Operator of a proposal to
22 the County for the renewal of a Franchise, the County shall provide
23 prompt public notice of such proposal and, during the four (4) month
24 period which begins on the completion of any proceedings under subsection
25 (A), renew the Franchise or, issue a preliminary assessment that the
26 Franchise should not be renewed and, at the request of the operator or on
27 its own initiative, commence an administrative proceeding after providing
28 prompt public notice of such proceeding in accordance with paragraph (2)
29 to consider whether:

30 (a) the Cable Operator has substantially complied with the
31 material terms of the existing Franchise and with applicable law;

32 (b) the quality of the operator's/Service including signal
33 quality, response to consumer complaints, and billing practices, but
34 without regard to the mix, quality, or level of Cable Services or other

1 Services provided over the system, has been reasonable in light of
2 community needs;

3 (c) the operator has the financial, legal, and technical
4 ability to provide the Services, facilities, and equipment as set forth
5 in the operator's proposal; and

6 (d) the operator's proposal is reasonable to meet the future
7 cable-related community needs and interests, taking into account the cost
8 of meeting such needs and interests.

9 (2) In any proceeding under paragraph (1), the Cable Operator
10 shall be afforded adequate notice and the Cable Operator and the County,
11 or its designee, shall be afforded fair opportunity for full
12 participation, including the right to introduce evidence (including
13 evidence related to issues raised in the proceeding under subsection (A),
14 to require the production of evidence, and to question witnesses. A
15 transcript shall be made of any such proceeding.

16 (3) At the completion of a proceeding under this subsection,
17 the Franchising Authority shall issue a written decision granting or
18 denying the proposal for renewal based upon the record of such proceeding
19 and transmit a copy of such decision to the Cable Operator. Such
20 decision shall state the reasons therefor.

21 (D) Any denial of a proposal for renewal shall be based on one
22 or more adverse findings made with respect to the factors described in
23 subparagraphs (a) through (d) of subsection (C)(1), pursuant to the
24 record of the proceeding under subsection (C). The Board of County
25 Commissioners may not base a denial of renewal on a failure to
26 substantially comply with the material terms of the Franchise under
27 subsection (C)(1)(a) or on events considered under subsection (C)(1)(b)
28 in any case in which a Violation of the Franchise or the events
29 considered under subsection (C)(1)(b) occur after the effective date of
30 the act unless the County has provided the operator with notice and the
31 opportunity to cure, or in any case in which it is documented that the
32 County has waived its right to object, or has knowingly acquiesced.

33 (E)(1) Any Cable Operator whose proposal for renewal has been
34 denied by a final decision of the County made pursuant to this Section 1,
35 or has been adversely affected by a failure of the County to act in

1 accordance with the procedural requirements of this Section 1, may appeal
2 such final decision or failure in a court of competent jurisdiction.

3 (2) The court shall grant appropriate relief if the court
4 finds that:

5 (a) any action of the County is not in compliance with the
6 procedural requirements of this section; or

7 (b) in the event of a final decision of the County denying the
8 renewal proposal, the operator has demonstrated that the adverse finding
9 of the County with respect to each of the factors described in
10 subparagraphs (a) through (d) of subsection (C)(1) on which the denial is
11 based is not supported by a preponderance of the evidence, based on the
12 record of the proceeding conducted under subsection (C).

13 (f) Any decision of the County on a proposal for renewal shall
14 not be considered final unless all administrative review has occurred or
15 the opportunity therefor has lapsed.

16 (g) For purposes of this Section 1, the term "Franchise
17 expiration" means the date of the expiration of the term of the
18 Franchise, as provided under the Franchise, as it was in effect on the
19 date of the enactment of this Ordinance.

20 (h) Notwithstanding the provisions of subsections (A) through
21 (G) of this Section 1, a Cable Operator may submit a proposal for the
22 renewal of a Franchise pursuant to this subsection at any time, and the
23 County may, after affording the public adequate notice and opportunity
24 for comment, grant or deny such proposal at any time (including after
25 proceedings pursuant to this section have commenced). The provisions of
26 subsections (A) through (G) of this section shall not apply to a decision
27 to grant or deny a proposal under this subsection. The denial of a
28 renewal pursuant to this subsection shall not affect action on a renewal
29 proposal that is submitted in accordance with subsection (A) through (G).
30 Section 2. Non-exclusive Means.

31 Section 626, "Renewal", of the Cable Communications Policy Act
32 and Section 1 above shall not be the exclusive means by which the Board
33 of County Commissioners may renew a Franchise.

1 Section 3. Waiver of 626 Renewal.

2 If the Cable Operator does not timely initiate proceedings
3 pursuant to, and in accordance with, Section 626 of the Cable
4 Communications Policy Act of 1984 or Section 1 above, he shall be deemed
5 to have waived the provisions thereof. Proposals for renewal outside of
6 the provisions of Section 626 shall be made no later than twenty (20)
7 months prior to the expiration of the Franchise.

8 Section 4. Fee for Renewal Proposal Review.

9 (A) A fee of Four Thousand Dollars (\$4,000.00) shall be paid
10 at the time the proposal is made or required under Section 626 of the Act
11 or Section 1 of this Article XVII. A fee of One Thousand Five Hundred
12 Dollars (1,500.00) shall be paid under any alternative proposal for
13 renewal submitted. Said funds are used by the County to defray the costs
14 of the County in processing the application.

15 (B) In addition to the fee set forth in Paragraph (A) above,
16 the Applicant shall be responsible to pay the cost of any and all
17 consultants, experts, accountants, attorneys, or other Person utilized by
18 the County to assist the County in its evaluation of the application.
19 Said costs shall be paid by the Applicant prior to final consideration of
20 the request by the Board of County Commissioners.

21 Section 5. Consultants.

22 County may require studies, reports, and analysis and may
23 retain consultants to evaluate the request for renewal and the cable
24 operator's proposal, and undertake such studies, reports, and analysis as
25 the Board of County Commissioner's may reasonably deem appropriate.

26 Section 6. Notice to Subscribers.

27 Upon the filing of a proposal for renewal, the Cable Operator
28 shall submit in the billing sent to Subscribers a notice of the pending
29 proposal. Cable operator shall also send to Subscribers notice of any
30 public hearings or public meetings. Such notice shall be not more than
31 sixty (60) and not less than ten (10) days prior to the subject meeting.
32 This notice shall be in addition to the notice required under Article
33 XXVII, Section 6 of this Ordinance.

1 Section 7. Advertise.

2 The Cable Coordinator shall direct the Clerk of the Board of
3 County Commissioners advertise any public or administrative hearing under
4 this Article XVII in a newspaper of general circulation in Palm Beach
5 County once each week for two (2) consecutive weeks not more than twenty
6 one (21) days, nor less than five (5) days, prior to the public or
7 administrative hearing. The Cable Coordinator shall notify all cable
8 operators of the public or administrative hearing.

9 Section 8. Community Interests, Upgrade.

10 The proposal for renewal shall specifically address the
11 community needs and interests, and shall set forth how the Cable Operator
12 will meet those community needs and interests. It shall set forth the
13 extent to which the Cable System will be upgraded, modernized, or rebuilt
14 taking into account the then state of the art Cable Systems and
15 technology and the cost of such improvements and alterations. The
16 proposal shall specifically and in detail address the criteria set forth
17 in Section 626 of the Act and Section 1 above. It shall be submitted no
18 later than the twentieth (20th) month prior to the expiration of the term
19 of the Franchise.

20 Section 9. Procedure.

21 (A) The Cable Coordinator shall, upon the request of the
22 Applicant, provide the Applicant with information regarding the renewal
23 process.

24 (B) Upon the Applicant's submitting a renewal proposal, the
25 Cable Coordinator shall review the proposal, and within ten (10) days,
26 notify the Applicant as to any deficiencies or the date that the cable
27 board will consider the proposal. Within twenty (20) days of receipt of
28 a non-deficient proposal, the Cable Board shall review the proposal.

29 The public, Cable Operators, and other interested Persons may
30 attend the meeting at which the Cable Board considers the proposal for
31 renewal, and may submit relevant objections and information.

32 Section 10. Cable Board Consideration.

33 The Cable Board shall review the proposal to ensure that full
34 information is submitted to the Board of County Commissioners in its
35 consideration of the request for a renewal. The Cable Board may request

1 additional information of the Applicant. The Cable Board shall not
2 require additional information beyond that set forth in this Article
3 without Board of County Commission approval. The requirement for
4 additional information by the Board of County Commissioners may be
5 outside of a public hearing.

6 Section 11. Recommendation, Notice.

7 The Cable Board shall recommend approval, reject as incomplete,
8 or recommend approval of the proposal with conditions. Upon final
9 consideration by the Cable Board and upon such time as any conditions
10 necessary for Board of County Commission consideration have been met, the
11 Cable Coordinator shall notify the Clerk of the Board of County
12 Commissioners to advertise the public hearing of the Board of County
13 Commissioners at which the proposal will be considered unless the Board
14 of County Commissioners appoints a hearing officer or board under Section
15 12. If a hearing officer or board is appointed, the Cable Coordinator
16 shall direct the Clerk to advertise the administrative hearing.
17 Consideration by the Board of County Commissioners or hearing officer or
18 board, as the case may be, shall be within thirty (30) days of the date
19 of the Cable Board's final consideration of the proposal, or if passed to
20 the Board of County Commission subject to conditions relating to a
21 complete application being met, within thirty (30) days of the date the
22 conditions are met. The Cable Board's approval shall not be construed as
23 a final approval. Said approval is as to the technical completeness of
24 the application only.

25 Section 12. Hearing Officer.

26 The Board of County Commissioners may appoint a hearing officer
27 or hearing board to conduct an administrative hearing, the cost of which
28 shall be borne by the applicant. The appointment may be made prior to or
29 after consideration by the Cable Board or the Board of County
30 Commissioners. Only individuals with an established familiarity, through
31 education or experience, with the cable television industry, including
32 cable television at a local level, shall be appointed hearing officer.
33 No Person Affiliated with, representing, or employed by a Cable Operator
34 in Palm Beach County shall be a hearing officer. The hearing officer
35 shall submit a synopsis of the transcript to the Cable Coordinator within

1 sixty (60) days of the hearing's conclusion. The hearing shall be
2 concluded no later than six (6) months after it is commenced. It shall
3 be the responsibility of the Cable Operator to present all relevant
4 evidence to the hearing officer, and failure to present evidence shall be
5 a waiver of its right to have such evidence considered.

6 The Board of County Commissioners shall consider the
7 recommendation of the hearing officer or board at a duly advertised (in
8 accordance with the provisions of this article) public hearing within
9 thirty (30) days of the date the transcript and synopsis is filed with
10 the Cable Coordinator.

11 Section 13. Award.

12 Subject to the limitations imposed on the Board of County
13 Commissioners by the Cable Communications Policy Act of 1984, the Board
14 of County Commissioners may award, deny, award with conditions, the
15 renewal, or may award a renewal for a portion of the area.

16 Section 14. Issuance of License by Cable Coordinator.

17 The Cable Coordinator shall issue to the Cable Operator upon
18 the Board of County Commissioner's renewal and all conditions precedent
19 to the issuance of the License being met, and the payment by the cable
20 operator of all direct and indirect costs related to the renewal by the
21 County.

22 Section 15. Period of Effectiveness

23 The renewal shall not be for more than fifteen (15) years.

24 Section 16. Other Laws/Representations.

25 Any renewal shall be subject to all the effective laws,
26 ordinances, rules, regulations, procedures and policies. All
27 representations made by the Applicant in the renewal proposal and process
28 shall be binding upon the Cable Operator to the same extent as, and for
29 the same reasons as, representations made in an Application Process.

30 Section 17. Reservation.

31 The Board of County Commissioners reserves the right to amend
32 the renewal criteria of this Article XVII as it deems appropriate and as
33 permitted by law.

1 ARTICLE XVIII. ACQUISITION BY THE BOARD OF COUNTY COMMISSIONERS.

2 The Board of County Commisisoners reserves the right to
3 acquire or effect a transfer of the Cable System in accordance with
4 then-applicable laws, ordinances, rules, or regulations.

5 ARTICLE XIX. VIOLATIONS

6 Section 1. County Effecting Cure.

7 In the event the Cable Coordinator determines that the cable
8 operator has violated any of the terms of this Ordinance, the Resolution,
9 the License, the application, or Representations Made in the Application,
10 Transfer, or Renewal Process, or the rules and regulations as may from
11 time to time lawfully adopted, the Cable Coordinator shall serve upon the
12 Cable Operator written notice to correct the Violations within the number
13 of days set forth in the notice which time allowed shall be reasonable in
14 light of the nature of the Violation and work to be completed, and in the
15 event the Cable Operator shall fail to correct the Violations, make any
16 repair, remove or relocate any part of its system, or otherwise perform
17 its obligations, or fails to take necessary corrective action, the County
18 may cause the necessary work to be completed or Services to be provided
19 or other corrective action to be taken, and the Cable Operator shall pay
20 the County the reasonable costs thereof within forty five (45) days of
21 receipt of an itemized account of same, including a reasonable charge for
22 the necessary administrative expenses incurred by the County.

23 Section 2. Notice of County Action.

24 Prior to effecting the cure, the Cable Coordinator shall notify
25 the Cable Operator that the cure will be effected by the County and that
26 the Cable Operator may request a hearing before the Cable Board to
27 contest the Violation, request relief, or provide information relating to
28 the Violations. The request shall be in writing and shall specifically,
29 and in detail specify all reasons and purposes for the hearing and shall
30 toll the time within which the remedy shall be effected, unless the
31 remedy causes an imminent threat to the safety of Persons or the property
32 of others. The Cable Coordinator shall inform the appellant if no
33 tolling will be permitted. The Cable Board shall hear the matter within
34 twenty one (21) days of the date the written request is received by the
35 Cable Coordinator. Prior to effecting the cure, the Cable Coordinator

1 shall schedule the matter for consideration by the Cable Board for it to
2 make a recommendation to the Board of County Commissioners. The cable
3 operator shall be apprised of the meetings at which the matter will be
4 considered. The Cable Operator may appear at the Cable Board and submit
5 information in defense of itself. Any affected Person shall also be
6 notified. Failure of the Cable Operator to submit evidence or
7 participate in the Cable Board's hearing shall constitute a waiver of all
8 rights of objection relating to the alleged Violation.

9 Section 3. Immediate Threat.

10 Where the Violation poses an immediate threat to the public
11 health or safety, the Violation may be cured by the County without prior
12 notice to the Cable Operator and adherence to the procedure set forth in
13 this Article. Where the circumstances permit, County will provide
14 notice.

15 Section 4. Board of County Commission, No Waiver.

16 No cure pursuant to this Section shall be effected by the
17 County except upon the approval of the Board of County Commissioners.
18 Nothing herein, and no action hereunder, shall be deemed a waiver of
19 other remedies.

20 ARTICLE XX. ASSESSMENTS

21 Section 1. Day Constitutes Separate Occurrence.

22 Assessments against the Cable Operator shall be imposed in
23 accordance with the standards set forth in this Article XX for Violations
24 of this Ordinance, the Resolution, License, application, Representations
25 Made In The Application Transfer, Or Renewal Process, or rules and
26 regulations as may from time to time be lawfully adopted. The
27 assessments shall be in accordance with the procedure and schedule set
28 forth in this Article. Except as noted to the contrary in the table
29 appearing in Section 8 below, the amount shall be assessed per
30 occurrence. Each day or portion thereof of a continuing Violation shall
31 constitute a separate occurrence for purposes of this Article XX.

32 Section 2. Non-exclusive Remedy.

33 The remedy set forth in this Article shall be in addition to,
34 and not in derogation of, any other remedy afforded the County by this
35 Ordinance, and any other law, ordinance, rule, or regulation. The

1 schedule set forth herein is liquidated damages, it being recognized by
2 the County and, by accepting the License the Cable Operator, that (1) at
3 the time of accepting the License and the adoption of this Ordinance it
4 is difficult to calculate the actual damages incurred by the County and
5 public for Violations of this Ordinance, (2) the amounts are reasonable,
6 and (3) the amounts are not penalties.

7 Section 3. Notice.

8 Upon determining that a Violation of this Ordinance by a cable
9 operator has occurred, or is occurring, and that remedial measures are
10 not being taken or are not effecting a cure, the Cable Coordinator shall
11 notify the Cable Operator stating with particularity the Violation,
12 notifying it of the provisions of this Article, and, if ongoing or
13 recurrent, directing compliance. Should the Cable Coordinator not be
14 satisfied with the explanation of the Cable Operator that a Violation has
15 not occurred, or is not occurring and that remedial action is not
16 effecting a cure or that Violations are recurrent, the Cable Coordinator
17 shall schedule the matter for consideration before the Cable Board and
18 notify the Cable Operator by certified mail, postage prepaid, of the
19 date, time, and place of the Cable Board's consideration of the alleged
20 Violation, shall state with particularity the specific alleged
21 Violations, shall inform the Cable Operator of the right to be
22 represented by counsel, shall inform the Cable Operator of the liquidated
23 damages provisions of this Article.

24 Section 4. Cable Board Hearing.

25 The Cable Board shall conduct the hearing informally. The
26 hearing shall be recorded and an uncertified transcript prepared, if
27 requested by the Cable Operator, at the Cable Operator's expense. The
28 Cable Board shall consider all relevant information presented. Based on
29 the information presented, the Cable Board shall determine whether the
30 Violation has occurred, whether such was excused, and any mitigating
31 circumstances. Based upon such, the Cable Board shall recommend an
32 assessment as liquidated damages an amount up to of the amount set forth
33 in the schedule set forth below. In determining whether the Cable Board
34 shall recommend a waiver of the full assessment of liquidated damages, it
35 shall consider the:

- 1 (A) Severity of Violation.
- 2 (B) Nature of Violation-intentional, reckless, negligent,
- 3 oversight.
- 4 (C) Potential harm to the County or public.
- 5 (D) Geographic area affected.
- 6 (E) Number and percentage of Subscribers affected.
- 7 (F) Past practices of Cable Operator.
- 8 (G) Ability to comply.
- 9 (H) Willingness or good faith of Cable Operator to comply.
- 10 (I) Time that the Violation continues or recurs.
- 11 (J) Control of Cable Operator exercised.
- 12 (K) Any other factors bearing on the matter.

13 Section 5. Transcript/Report to Board of County Commissioners.

14 Except as provided pursuant to Article XV, Section 5, (A) a
15 transcript of the proceeding along with a report and recommendation of
16 the Cable Board shall be sent to the Board of County Commissioners within
17 twenty-one (21) days of the completion of the Cable Board's hearing. The
18 Board of County Commissioners consider the matter and make a final
19 determination as to appropriate liquidated damages, or other sanction.
20 The affected Cable Operator and other affected Persons may present
21 relevant evidence and information to the Board of County Commissioners.
22 Written notice of the date and place of Board of County Commissioners'
23 consideration shall be sent by the Cable Coordinator to the cable
24 operator.

25 Section 6. Court.

26 Recovery of assessments pursuant to this Article XX shall be
27 pursued through a court of competent jurisdiction, except as provided
28 pursuant to Article XV, Sections 5 and 6.

29 Section 7. Liquidated Damages.

30 It is declared that this Article is not penal in nature, that
31 it is contractual in nature, that the Cable Board is acting in a
32 fact-determining capacity and not a quasi-judicial capacity, and that the
33 intent of the Cable Operator to violate is not necessary to assess the
34 liquidated damages herein.

1 Section 8. Schedule.

2 (A) The liquidated damages assessed for each separate day, or
 3 portion thereof, shall be as set forth in the following schedule for each
 4 type of Violation:

5	<u>Type of Violation</u>	Amount Per Occurrence
6		<u>in Dollars</u>
7	(1) Installation of facilities and	\$500.00
8	equipment outside of the Franchise	
9	area. (The notice sent shall allow	
10	twenty (20) days to remove the	
11	facilities.)	
12	(2) Not serving an area meeting the	
13	density requirements or the density	
14	established by reference to the	
15	representations made in the application	
16	process. (The notice sent shall allow	
17	thirty (30) days to make Service	
18	available).	
19	(primary responsibility)	500.00
20	(secondary responsibility)	350.00
21	(3) System wide Outage for more than	5.00 per
22	ninety-six (96) hours from the time	Subscriber
23	first reported without the	
24	approval of the Board of County	
25	Commissioners (except for force majeure,	
26	as set forth in this Ordinance.)	
27	(4) Outage involving more than	5.00 per
28	two hundred (200) Subscribers and	Subscriber
29	for more than ninety-six (96) hours	
30	from the time first reported without	
31	the approval of the Board of	
32	County Commissioners (except for force	
33	majeure, as set forth in this Ordinance).	
34	(5) Outage involving more than twenty	5.00 per
35	(20) Subscribers for more than	Subscriber
36	forty-eight (48) hours from the	
37	time first reported without the	
38	approval of the Cable Coordinator.	
39	(6) Signal quality falling below the	5.00 per
40	requirements set forth in this Ordinance	Subscriber
41	at the ground block after having	
42	received notice thereof from the	
43	Cable Coordinator allowing at least	
44	five (5) days to cure, as determined	
45	by the information and testing of the	
46	Cable Coordinator provided the Cable	
47	Coordinator's equipment was properly	
48	calibrated a maximum of five (5) days	
49	before the test was conducted, and	
50	excluding any illegal connectors detected.	
51		
52	(7) Failure to provide the notices to subscribers	400.00
53	or in the geographic area as required in	
54	this Ordinance.	
55	(8) Failure to cooperate and coordinate	100.00
56	with the Cable Coordinator in detecting	
57	and locating signal leakage after due	
58	notice of such leakage.	

1	(9)	Failure to take remedial measures relating	100.00
2		to the Installation of Facilities and	
3		Equipment not in compliance with this	
4		Ordinance which are reasonably required	
5		by the Cable Coordinator to avoid or	
6		mitigate recurring Outages. The notice	
7		sent shall allow a minimum of thirty (30)	
8		days to remedy. The measures required	
9		by the Cable Coordinator shall not exceed	
10		in annual cost (including debt Service)	
11		of five percentum (5%) of the previous	
12		years gross annual revenue.	
13	(10)	Failure to obtain a permit for	1.00 per
14		Installation in a Public Right-Of-Way,	foot but not
15		or a Violation of permit conditions.	less than 50.00
16		Additional charge for a bridge attachment.	100.00
17	(11)	Failure to restore to prior or similar	1.00 per
18		conditions compatible easements after	foot but not
19		the Installation of facilities and	less than 50.00
20		equipment, except restoration of	
21		property not lawfully in said easement,	
22		and except as provided by easement	
23		usage, permitting, release, consent	
24		or similar such agreements.	
25	(12)	Failure to restore to County standards	2.00 per
26		rights-of-way after Installation of	foot but not
27		Facilities And Equipment.	less than 100.00
28	(13)	Failure to coordinate an Installation	300.00
29		in a right-of-way or compatible easement	
30		with U.N.C.L.E. or the Easement Holder	
31		or beneficiary.	
32	(14)	Failure to adhere to the permitting	0.50 per foot
33		inspection, and installation requirements	but not less
34		in Public Right-of-ways under Article XIV,	than 100.00
35		Section 2.	
36	(15)	Failure to make available for County	200.00
37		inspection or submit to the County those	
38		records as required under this Ordinance.	
39	(16)	Failure to mark pedestals, amplifiers,	10.00
40		or similar Facilities And Equipment.	
41	(17)	Failure to use a certified contractor	100.00
42		(who may be in the employee of cable	
43		operator) in the supervision of	
44		Installation of Facilities And Equipment,	
45		including house drops and building wiring.	
46	(18)	Unauthorized transfer of the Franchise or	500.00
47		the assets as set forth in Article XI.	
48	(19)	Installation of facilities and	50.00
49		equipment, including house drops and	
50		building wiring which Installation or	
51		Facilities And Equipment does not meet	
52		the technical requirements of this Ordinance.	
53	(20)	Stranding as prohibited by this Ordinance.	5.00 per
54			foot but not
55			less than 200.00

1	(21) Failure to relocate, either temporarily	10.00 per
2	or permanently, Facilities And Equipment	foot but not as
3	required pursuant to this Ordinance.	less than 200.00
4	(22) Failure to maintain insurance.	500.00
5	(23) Failure to provide Performance Security.	400.00
6	(24) Failure to meet the phone Service and	20.00
7	and system requirements of Article XXII,	
8	Section 5.	

9 (B) Assessments shall begin to accrue as set forth in the
10 written notice informing the Cable Operator of the alleged Violation.
11 The notice shall give the Cable Operator a reasonable time to remedy the
12 Violation; provided, however, the fines shall begin to accrue immediately
13 upon notice to the Cable Operator from the Cable Coordinator of an
14 alleged Violation under paragraphs (10), (11), (12), (13), (17), (18),
15 and (19) of paragraph (A).

16 (C) The Board of County Commissioners reserves the right to
17 amend the existing or adopt further assessments for Violations not
18 specifically set forth in paragraph (A).

19 (D) The procedure and remedies set forth herein are not
20 exclusive. Remedies which are not set forth herein may be pursued to
21 effect a cure. Alternate remedies may be pursued simultaneously.
22 Utilization by the County of the liquidated damages or fine provisions
23 shall not constitute a waiver of other remedies. Failure to utilize one
24 remedy herein shall not constitute a waiver thereof.

25 (E) Nothing herein shall be construed as affecting in any
26 manner whatsoever the rights of Persons to any relief otherwise available
27 for damages or injury suffered as a result of alleged Violations of, and
28 the remedies under, this Ordinance.

29 Section 9. Use of funds.

30 Any funds collected under this Article XX shall be used to
31 defray the cost of administering this Ordinance.

1 ARTICLE XXI. REVOCATION

2 Section 1. Examples and Standards.

3 In addition to all other rights and powers retained by the
4 County under this Ordinance or otherwise, the County reserves the right
5 to revoke in whole or in part the Franchise and License and all rights
6 and privileges of the Cable Operator thereunder in the event of a
7 recurring or protracted substantial breach of its terms and conditions
8 which substantially affects the provision or quality of Cable Services or
9 the ability of the County to effectively regulate the Cable Operator, or
10 the County's collection of all fees and charges. The power of revocation
11 shall not be used if said breach is a result of force majeure. The
12 breaches appearing on the list set forth below in this section shall be
13 considered substantial breaches. The list is not exhaustive:

14 (A) Willful or grossly negligent repeated Violations of this
15 Ordinance, the Resolution awarding the Franchise, or the representations
16 made in the Application Process, or any rule, order, or regulation of the
17 County made pursuant to this Ordinance.

18 (B) An attempt to dispose of any of the facilities or property
19 of the system authorized by this Franchise to prevent the County from
20 acquiring it, as provided for herein and the Cable Communications Policy
21 Act of 1984.

22 (C) Recurrent failures to restore Service on the entire or a
23 substantial portion of the Cable System after ninety six (96) consecutive
24 hours of interrupted Service except upon approval of such interruption by
25 the County for good cause shown.

26 (D) Recurrent Service Outages of the entire Cable System or a
27 substantial portion thereof which, in the aggregate, exceed ten (10) days
28 in any thirty (30) day period.

29 (E) Insolvency of the Cable Operator or inability or
30 unwillingness of the Cable Operator to pay its just debts when they
31 accrue; or application of the Cable Operator for adjudication as a
32 bankrupt.

33 (F) Recurrent failures after notice by the Cable Coordinator
34 to provide Service to an area or areas meeting the density requirements
35 of Article XVI.

1 Section 2. Notice.

2 Where the circumstances allow, the County shall make a written
3 demand that the Cable Operator comply. If a Violation by the cable
4 operator continues for a period beyond that set forth in the letter
5 following such written demand without written proof that the corrective
6 action has been taken or is being Actively and expeditiously pursued, the
7 County may terminate the Franchise. The County shall cause to be served
8 upon Cable Operator, at lease fifteen (15) days prior to the date of such
9 meeting, a written notice of intent to institute termination proceedings
10 and the time and place of the meeting for said purpose. Public notice
11 shall be given of said meeting and the issue to be considered. The cable
12 operator shall provide notice of the meeting in the next available
13 billing to Subscribers, if time allows.

14 Section 3. Hearing.

15 No revocation shall be effective unless and until the County
16 shall have adopted a resolution setting forth causes and reasons for the
17 termination and the effective date thereof. Such resolution shall not be
18 adopted without having afforded the Cable Operator an opportunity to be
19 heard upon the proposed action, including where extenuating circumstances
20 result solely from force majeure or from circumstances behind the cable
21 operator's reasonable control (provided the Cable Operator has taken all
22 reasonable or necessary steps, and has been diligent in pursuing its
23 requirements under the Franchise).

24 Section 4. Cable Board Consideration.

25 The Board of County Commissioners may direct that the matter be
26 reviewed by the Cable Board prior to the Board of County Commissioner's
27 hearing, or after the hearing is commenced, and that the Cable Board
28 report to the Board of County Commissioners with its recommended findings
29 and determinations.

30 ARTICLE XXII. FACILITIES AND EQUIPMENT/QUALITY OF SERVICE

31 Section 1. Services.

32 (A) The Cable Operator shall provide, as a minimum, the broad
33 categories of Services and mix, quality, and level of programming
34 represented to the County on the Application Process.

1 (B) The Cable System shall, at a minimum, be constructed in
2 accordance with the design requirements utilizing at a minimum the
3 Facilities And Equipment contained in the representations of the cable
4 operator in the Application Process.

5 (C) At a minimum, the capability for the following Services
6 will be provided during initial Installation:

7 (1) At least fifty four (54) Channel capability.

8 (Transferees shall not be required to upgrade
9 previously-installed Facilities And Equipment to
10 fifty four (54) Channel capability. New
11 Installations of transferees shall be at fifty-four
12 (54) Channel capability.)

13 (2) Provisions for interconnection with other cable
14 systems for the provision of PEG programming and an
15 Institutional Network.

16 (3) Color signals.

17 (D) Any line extensions or rebuilds shall be made within a
18 fifty-four (54) Channel capability.

19 (E) Non-Commercial Educational service (in addition to the
20 requirements of Article XXXI) programming shall be
21 provided.

22 (F) All FCC technical rules and standards shall be met.

23 (G) A convenient switching mechanism shall be provided to the
24 Subscriber, upon request, at a reasonable charge, to allow viewing of
25 broadcast Channels from the Subscriber's antenna. Nothing herein shall
26 be construed to require the Cable Operator to install an antenna or
27 otherwise make the necessary connections except the Installation of the
28 switching mechanism. In the event a more stringent Federal regulation is
29 adopted relating to such a switching mechanism, such shall control.

30 (H) Standby Power. The Cable Operator shall maintain
31 equipment capable of providing standby power for headend, transmission,
32 and trunk amplifiers for a minimum of two (2) hours.

33 (I) Emergency Override. The Cable Operator shall incorporate
34 into its cable communication system the capability which will permit the
35 County in times of emergency to override the audio portion of all

Channels simultaneously. The Cable Operator shall designate a Channel (it may be the Public, Educational, or Government programming and access Channel) which will be used for emergency broadcasts of both audio and video. The Cable Operator shall cooperate with the County in the use and operation of the emergency alert override system.

Section 2. Change in Services.

The Cable Operator shall send prior written notice to the Cable Coordinator when rearranging, replacing, removing, or retiering Services.

Section 3. Minimum Signal Quality.

(A) The system, as installed, shall be capable of passing standard black and white and color television FM-audio signals without material degradation and with no phase shift and no effect on color fidelity and intelligence.

(B) The system and all equipment shall be designed and rated for 24-hour per day continuous operation.

(C) The signals produced by the system shall be of high quality throughout the system with no difference perceptible to viewers whether in close proximity to the headend or at the furthest extension of the trunk line.

Section 4. Technical Standards.

The system shall meet, as a minimum, the technical standards set forth in this Section.

(A) The aural center frequency of the aural carrier shall be 4.5 Mhz +/-5 Khz above the visual carrier.

(B) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the Cable System as viewed from the Subscriber terminals, shall not be less than the following appropriate value:

Internal Impedance	Visual Signal Level
75 ohms	1 millivolt
300 ohms	2 millivolts

(C) The visual signal level on each Channel shall not vary more than twelve (12) decibels within any twenty-four (24) hour period, and shall be maintained within:

(1) Three (3) decibels of the visual signal level of any visual carrier within six (6) mhz nominal separation, and

(2) Twelve (12) decibels of the visual signal level on any other Channel, and

(3) A maximum level such that signal degradation due to overloading the Subscriber's receiver does not occur.

(D) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed five (5) percent of the visual signal level.

(E) The amplitude variation of any cable television Channel shall not exceed two (2) decibels across the band from 0.75 to 5.0 Mhz above the lower frequency boundary of the Channel.

(F) Terminal isolation shall not be less than eighteen (18) decibels.

(G) Leakage levels shall be in accordance with FCC specifications.

Section 5. Efficient Telephone Communication Services.

The Cable Operator shall render efficient telephone communication Service, and, at a minimum, meet the standards set forth in this Section 5.

(A) Customer Service Response. Any Cable Operator with fifteen hundred (1,500) or more basic Subscribers shall have a customer Service representative employed by the Cable Operator available to handle customer calls from 8 A.M. to 8 P.M. Monday through Friday excluding holidays and weekends. During all other times, each system must have a capable answer Service for messages on repair Service phone lines. Answering machines are not acceptable. The Cable Operator shall maintain a log of calls made to the answering Service, which shall be made available to the Cable Coordinator.

(B) Telephone System Requirements

(1) Each operator of a fifteen hundred (1,500) or more basic Subscriber base shall have a phone system with separate phone lines for customer Service, repair lines, engineering/sales, and corporate/administrative lines; and these numbers shall be listed in the

1 local telephone directory under the categories stated above.

2 (2) If the Cable Coordinator's office reviews an operator's
3 complaints and finds them inordinate, the Cable Coordinator will request
4 of the Cable Operator to provide her office with a communication traffic
5 study within sixty (60) days of notice.

6 (3) The study will be conducted on all customer Service trunk
7 lines.

8 (4) The study must include information on the efficiency of
9 the communication system measured from the telephone company's central
10 office, as well as other performance information available from the cable
11 operator's communication equipment.

12 (5) The specific standards which must be met are as follows:

13 (a) 60% of all calls will be answered within 5 rings.

14 (b) 80% of all calls will be answered within 7 rings.

15 (c) 60% of all call will not be on hold longer than 120
16 seconds.

17 (d) 90% of all calls will not be on hold longer than 300
18 seconds.

19 (e) A customer on hold will be informed every sixty (60)
20 seconds that their call is being attended to.

21 (f) Grade of Service shall be equal to or better than P.
22 25 (no more than 25 calls out of each 100 calls will
23 receive a busy signal).

24 (5) The study must provide information that confirms that the
25 Cable Operator's communications system is properly trunked and staffed to
26 meet the phone system standards set out under Paragraph (A) above using
27 generally accepted telephonic engineering methods.

28 (C) Remedy. In the event that a deficiency has been
29 determined to exist within a Cable Operator's communication system, in
30 that the cable operator fails to meet the standards set out under
31 Paragraph (A) above, and further fails to meet the requirements set out
32 under Paragraph (B) above, the Cable Operator shall have a three (3)
33 month period from notification of such deficiency to cure same.

1 (D) Reservation. The Board of County Commissioners reserves
2 the right to modify the requirements herein as it reasonably deems
3 appropriate to serve the public benefit, after notice to and input from
4 Cable Operators.

5 Section 6. Continuity of Service Mandatory.

6 (A) It shall be the right of all Subscribers to continue
7 receiving Service insofar as their financial and other obligations to the
8 Cable Operator are honored. In the event that the Cable Operator elects
9 to replace, rebuild, modify, or sell the system, or the County gives
10 notice of intent to terminate, fails to renew the Franchise or a transfer
11 is effected, the Cable Operator shall take reasonable measures to ensure
12 that all Subscribers receive continuous, uninterrupted Service for the
13 duration of the franchise regardless of the circumstances. In the event
14 of a change of Franchise, or in the event a new operator acquires the
15 system, the Cable Operator shall cooperate with the County and new
16 Franchisee or operator in maintaining continuous Service to all
17 Subscribers.

18 (B) In the event Cable Operator abandons reasonable attempts
19 to operate the system for seven (7) consecutive days without prior
20 approval of the County or without just cause, the County may, at its
21 option, operate the system or designate an operator until such time as
22 Cable Operator restores Service under conditions acceptable to the County
23 or a permanent operator is selected. If the County is required to
24 fulfill this obligation for the Cable Operator, the Cable Operator shall
25 reimburse the County for all reasonable costs or damages incurred by the
26 County that are the result of the Cable Operator's failure to perform.
27 In addition to such reimbursement, the Cable Operator shall pay to County
28 all Gross Revenue assignable to the period for which the County operates
29 the system. The County shall be responsible for paying the direct actual
30 operating expenses incurred during substitute operation hereunder upon
31 its receipt of all Gross Revenues for said period.

32 Section 7. Maintenance, Repairs, Interruption.

33 The Cable Operator shall maintain all parts of the system in
34 good, safe and operable condition throughout the entire Franchise period.
35 The Cable Operator shall render efficient Service, make repairs promptly

1 and interrupt Service only for good cause and for the shortest time
2 possible. Such interruptions, insofar as possible, shall be preceded by
3 notice and shall occur during periods of minimum system use.

4 Section 8. System Compliance Tests.

5 (A) The operator of a cable television system in Palm Beach
6 County shall be responsible for insuring that each Cable System operated
7 in Palm Beach County by operator, is designed, installed, and operated in
8 a manner that fully conforms with Subpart K of the FCC's Rules and
9 Regulations governing cable television. Operator shall be fully prepared
10 to demonstrate, on request by an authorized representative of the County,
11 that the system does, in fact, comply with Subpart K.

12 (B) Operator shall maintain at its local office a current
13 listing of the cable television Channels which operator delivers to its
14 Subscribers.

15 (C) Special Tests. The County may require or perform
16 performance tests including tests involving a specific Subscriber's
17 terminal to determine system performance. Requests for such tests will
18 be made only on the basis of complaints received or other evidence
19 indicating an unresolved controversy or significant noncompliance, and
20 such tests shall be limited to the particular matter in controversy. The
21 County shall endeavor to so arrange its request for such tests so as to
22 minimize hardship or inconvenience to Cable Operator.

23 (D) Subscriber Terminal Test Requests. Cable operator shall,
24 upon reasonable request or complaint by a Subscriber, perform such tests
25 as necessary at the Subscriber's terminal to establish whether a signal
26 of requisite quality is being delivered to the Subscriber's premises.

27 (E) Record Keeping and Reports. All requested system
28 compliance test reports, maintenance and Outage logs, Subscriber terminal
29 test reports, and all leakage and interference logs together with all
30 data obtained in connection therewith, shall be preserved in the files of
31 Cable Operator for three (3) years. Copies of all such tests, reports
32 and test data shall be furnished to Cable Coordinator upon request.

33 Section 9. Complaint Procedure, Records.

34 The Cable Operator shall maintain an office and Service center
35 conveniently located in or near the Service area which shall be open

1 during all normal business hours, have a publicly listed telephone, in
2 accordance with Section 5, and receive complaints and requests for
3 repairs on a twenty four (24), seven (7) day a week basis. The Cable
4 Operator shall have a qualified Technician on call on a twenty-four (24)
5 hour basis to answer all Service complaints. During the hours when a
6 Cable Operator Service representative is not on duty to receive calls,
7 the qualified Technician shall call the answering Service no less
8 frequently than once every two (2) hours. Upon receipt of a Service
9 complaint involving an Outage or other severe reception problem during
10 normal working hours the Cable Operator shall respond by correcting the
11 Service complaint within four (4) hours or by contacting the complainant
12 and indicating why it cannot be corrected within the time period and when
13 the situation will be remedied. The Cable Operator shall respond to
14 Service complaints involving an Outage or severe reception problem
15 received during non-normal hours by correcting the Service complaint
16 within twelve (12) hours or by contacting the complainant within the same
17 time period to indicate why it cannot be corrected in that time period
18 and when the situation will be remedied. Complaints not involving an
19 Outage or severe reception problem shall be corrected within twenty-four
20 (24) hours except for matters outside of the control of the Cable
21 Operator. Cable operator shall schedule Service calls with Subscribers
22 to the extent reasonably practicable. The scheduling shall, at a
23 minimum, be in time-frames of visitation of no more than four (4) hours.
24 If the appointment cannot be kept, cable operator shall notify the
25 Subscriber. In the event Service to any Subscriber is interrupted for
26 twenty-four (24) hours or more through the fault of Cable Operator, the
27 Cable Operator shall provide such subscriber with a pro rata rebate or
28 credit. In calculating the rebate or credit, the time of Outage shall be
29 calculated from the time the Outage is reported to the Cable Operator.
30 Cable operator shall maintain records of the time of complaint, nature of
31 complaint, and any corrective action taken. These records shall be held
32 by the Cable Operator for two (2) years and shall be made available to
33 the Cable Coordinator upon request. A summary of complaints shall be
34 prepared by the Licensee and submitted to the County annually, beginning
35 twelve (12) months after Service is provided to the first Subscriber.

1 The Cable Coordinator may establish by rule a format for the annual
2 summary. The Cable Operator shall notify Subscribers, at the time of
3 initial subscription to the system, of the procedure for reporting and
4 resolving complaints by delivering to each Subscriber a written notice in
5 a form approved by the Cable Coordinator, including a statement that
6 unresolved complaints may be reported to the Cable Coordinator.

7 Section 10. Stranding, Rebuilds.

8 (A) Except for linking the Cable System together, the cable
9 operator shall not strand poles in areas where all Facilities And
10 Equipment necessary to make Service immediately available to Subscribers
11 is not in place and energized within four (4) months of the placing of
12 strands. The complete facilities and equipment necessary to provide
13 Service drops shall be installed within four (4) months of the placing of
14 strands.

15 (B) The Cable Operator shall remove the old facilities and
16 equipment when rebuilding upon activation of the new facilities and
17 equipment.

18 Section 11. Reporting of Future Construction.

19 Within six (6) months of the effective date of this Ordinance,
20 all Cable Operators shall submit to the Cable Coordinator a report
21 describing to the extent practicable the planned construction and
22 Installation of facilities and equipment by the Cable Operator in the
23 then-following three (3) year period. The report shall be updated
24 annually by the Cable Operator. The Cable Coordinator may establish a
25 uniform reporting time, procedure, and format which shall be followed by
26 the Cable Operator. Cable operators receiving an initial award or
27 expansion after the effective date of this Ordinance shall update their
28 application construction plan at the same time other Cable Operators are
29 required to update.

30 ARTICLE XXIII. INSURANCE/INDEMNITY

31 Section 1. Insurance.

32 (A) The Cable Operator shall maintain throughout the term of
33 the Franchise, general liability insurance with an insurance company
34 authorized to do business in the State of Florida insuring against claims
35 for liability or damages. It shall include, at a minimum, the following

types of insurance coverage in amounts not less than shown:

(1) Comprehensive general liability \$3,000,000.00
covering: Combined single limit

(a) Personal injury and bodily
injury

(b) Broad form property damage
without XCU exclusions

(c) Products/completed operations

(d) Contractual liability to apply
to the liability assumed by
Cable Operator under the
Franchise agreement.

(2) Comprehensive automobile liability \$3,000,000.00
covering: Combined single limit

(a) Owned, leased, hired and
non-owned vehicles

(3) Broadcasters errors and omissions \$1,000,000.00
(or similar form) covering:

(a) Infringement of copyrights

(4) Workers compensation Statutory amount
coverage required by State of \$500,000.00
Florida Employer's liability

(B) The insurance coverage obtained by the Cable Operator in compliance with this Section shall be approved by the Risk Management Department and County Attorney, and such insurance policies, along with written evidence of payment of required premiums, shall be filed and maintained with the Cable Coordinator during the term of the Franchise, and may be changed from time to time to reflect changing liability exposure and limits, at the discretion of the Board of County Commissioners upon the input of the Risk Management Department. The Company shall immediately advise the County Attorney of any actual or potential litigation that may develop that would affect this insurance.

(C) All insurance policies except worker's compensation maintained pursuant to this Franchise shall contain the following conditions by endorsement:

(1) Palm Beach County shall be designated as an additional insured and that the term "owner" or "Palm Beach County" shall include all authorities, boards, divisions, departments, and offices of the County and the individual members, employees, agents, and contractors thereof in their official capacities and/or while acting on behalf of the

1 County.

2 (2) Each policy shall require that thirty (30) days notice
3 prior to a cancellation of or material change in policies, a notice
4 thereof shall be given to the County's Director of Risk Management and
5 County Attorney by registered mail.

6 (3) Insurers shall have no right of subrogation or recovery
7 against the County, it being the intention that the insurance policies
8 shall protect the Cable Operator and the County and shall be primary
9 coverage for all losses covered by the policies. Waivers of subrogation
10 shall be obtained and filed with the Cable Coordinator.

11 (4) The policy clause "Other Insurance" shall not apply to the
12 County where the County is an insured on the policy.

13 (5) Companies issuing the insurance policies shall have no
14 recourse against the County for payment of any premiums or assessments,
15 such shall be the responsibility of the Cable Operator.

16 (D) If the Director of Risk Management determines that a
17 certificate of insurance is acceptable evidence for insurance coverage,
18 the requirements set forth above shall be met and evidence of such shall
19 be attached to or included on the certificate of insurance.

20 (E) The County may require increases in the amount or types of
21 coverage no more frequently than every three (3) years as it deems
22 appropriate so as to ensure full protection of the County and the public.
23 The Cable Operators shall have six (6) months from the date of
24 notification from the Cable Coordinator to comply with any increase.

25 (F) Cable operators awarded a Franchise prior to November 2,
26 1984 shall have six (6) months to comply with the provisions of this
27 Section 1.

28 Section 2. Indemnity.

29 The Cable Operator agrees to indemnify, defend, and save
30 harmless the County, its officers, employees, agents and contractors,
31 against and from any and all claims by or on behalf of any Person, firm,
32 corporation, arising from any breach or default on the part of the cable
33 operator in the performance of any covenant or agreement on the part of
34 the Cable Operator to be performed pursuant to the requirements of this
35 Ordinance, or arising from any negligence of the Cable Operator, or any

1 of its agents, contractors or subcontractors, servants, officers,
2 employees, or Licensees; and from and against all costs, counsel fees,
3 expenses and liabilities incurred in or about any such claim or
4 proceeding brought thereon.

5 ARTICLE XXIV. PERFORMANCE SECURITY

6 Section 1. Requirements.

7 (A) Within ten (10) days after the award of this Franchise,
8 the Company shall deposit with the Cable Coordinator performance
9 security, from or with a financial institution authorized to do business
10 in the State of Florida, said Performance Security shall be in the amount
11 of at least Two Dollars and Fifty Cents (\$2.50) per Subscriber, but not
12 less than Twenty-Five Thousand Dollars (\$25,000.00). The amount
13 calculated on a per Subscriber basis shall be rounded up to the nearest
14 One Thousand Dollars (\$1,000.00) and shall be changed annually to reflect
15 changes in the number of Subscribers. The form and content of such
16 Performance Security shall be approved by the County Attorney. The
17 Performance Security shall be used to insure the full and faithful
18 performance by the Cable Operator of all provisions of this Franchise,
19 compliance with all orders, permits and directions of any agency,
20 commission, board, department, division or officer of the County having
21 jurisdiction over the Cable Operator's acts or defaults under this
22 ordinance, and the payment by the Company of any liquidated damages,
23 damages, fees, claims, liens and penalties due the County which arise by
24 reason of any act or omission from or related to the construction,
25 operation, or maintenance of the system or the provision of cable
26 Services.

27 (B) The Performance Security shall be maintained in the
28 appropriate amount during the entire term of the Franchise and for one
29 (1) year after the Franchise expires or is terminated, even if amounts
30 are withdrawn pursuant to Paragraphs (A) or (C) of this Article.

31 (C) If the Cable Operator fails to pay to the County any
32 Franchise fees due under this Ordinance within three (3) months after
33 such become due; or fails to pay to the County within two (2) weeks after
34 written demand, any liquidated damages, damages, penalties costs or
35 expenses which become due under this Ordinance or which the County is

1 responsible for paying by reason of any act or omission of the cable
2 operator in connection with this ordinance or the Franchise; or fails,
3 after three (3) days' notice from the County of such failure to comply
4 with any provision of this Ordinance or the Franchise which the County
5 reasonably determines can be remedied by demand on the performance
6 security, then the County may immediately request payment of the amount
7 thereof, with interest and any penalties, from the Performance Security.
8 Upon such request for payment, the County shall notify the Cable Operator
9 of the amount and date thereof.

10 (D) The rights reserved to the County with respect to the
11 Performance Security are in addition to all other rights of the County
12 whether reserved by this Franchise or authorized by law, and no action,
13 proceeding or exercise of a right with respect to such performance
14 security shall affect any other right the County may have.

15 (E) The Performance Security shall contain the following
16 endorsement:

17 "It is hereby understood and agreed that
18 this (letter of credit, bond, escrow
19 agreement) may not be cancelled by the
20 surety or institution nor the intention
21 not to renew be exercised by the surety
22 or institution until sixty (60) days
23 after receipt by the County, by
24 registered mail, a written notice of such
25 intention to cancel or not to renew. The
26 County is an intended third party
27 beneficiary of this provision."

28 (F) Cable operators awarded a Franchise prior to November 2,
29 1984 shall have six (6) months to comply with the provisions of this
30 Section 1.

31 Section 2. Construction Bond.

32 The Board of County Commissioners reserves the right to, at any
33 time, and at its sole discretion, require a construction bond when it
34 determines that the Cable Operators are not constructing and installing
35 Facilities And Equipment or providing Cable Services in accordance with

1 the provisions of this Ordinance. Such construction bond shall be
2 obtained and furnished the County within three (3) weeks of a written
3 demand of the County. Such construction bond shall be in addition to the
4 Performance Security of Section 1. Nothing herein shall be construed to
5 prohibit the County from drawing on the Performance Security of Section 1
6 for the Cable Operator's failure to construct and install facilities and
7 equipment or provide Cable Services.

8 ARTICLE XXV. RESERVATIONS OF COUNTY

9 Section 1. Generally.

10 In addition to the specific reservations of the County set
11 forth herein, the Board of County Commissioners hereby reserves unto the
12 County the matters set forth in this Article.

13 Section 2. Police Powers.

14 In accepting a Franchise, the Cable Operator acknowledges that
15 its rights thereunder are subject to the police powers of the County to
16 adopt and enforce ordinances, resolutions, rules, regulations, policies
17 and practices necessary to the convenience, health, safety and welfare of
18 the public; and it agrees to comply with all applicable ordinances,
19 resolutions, rules, regulations, policies, and practices by the County
20 pursuant to such power.

21 Any inconsistency between, or ambiguity created by the
22 relationship between, the provisions of this Ordinance and any other
23 contemporaneous or future lawful exercise of the County's police powers
24 shall be resolved in favor of the latter.

25 Section 3. Cable Communications Policy Act of 1984.

26 (A) The County shall have all powers not otherwise preempted
27 by the Cable Communications Policy Act of 1984, the regulations of the
28 Federal Communications Commission, and any other Federal law, rule or
29 regulation; and shall have all powers conferred on a franchising
30 authority or allowed by the Cable Communications Policy Act of 1984 which
31 are not addressed in this Ordinance.

32 (B) Should any material amendment be made to the Cable
33 Communications Policy Act of 1984 or should any provision thereof be held
34 invalid or unenforceable by a court of competent jurisdiction which
35 materially affects the County's authority with respect to the regulation

1 of Cable Operators or the provisions of this Ordinance, the Board of
2 County Commissioners shall have the right to amend this Ordinance to the
3 extent it deems appropriate, and the then existing Franchise and License
4 shall be subject to such amendment.

5 Section 4. Rate Regulation.

6 Should the County at some future date be allowed to regulate
7 rates for the provision of cable or Other Services, the County may, at
8 its sole discretion, institute such rate regulation as it deems
9 appropriate. The Cable Operator shall have no vested,
10 impairment-of-contract, or other right as against such rate regulation.

11 Section 5. Intervention.

12 County shall have the right of intervention in any action at
13 law, suit, or other proceeding relating to the Cable System, the
14 provision of cable or Other Services, or this Ordinance to which cable
15 operator is a party, and Cable Operator shall not oppose such
16 intervention by County.

17 Section 6. Non-enforcement Not A Waiver.

18 The Cable Operator shall not be excused from complying with any
19 of the requirements of this Ordinance by any failure of the County on any
20 one or more occasions to insist upon or to seek compliance with any such
21 terms or conditions.

22 Section 7. Overbuilds.

23 (A) The Board of County Commissioners hereby finds that
24 sufficient information is not available at the time of the adoption of
25 this Ordinance to determine whether overlapping Franchisees are likely to
26 engage in widespread direct overbuilding or the Installation of
27 Facilities And Equipment in enclaves or the skipping of areas, and
28 whether such a practice would be detrimental or beneficial to the
29 purposes of this Ordinance.

30 (B) Based upon the potentiality of adverse overbuilds,
31 enclaving, and skipping, and in the event that the Board of County
32 Commissioners should determine, upon sufficient information, that
33 overbuilds, skipping, or enclaving are detrimental to the purposes of
34 this Ordinance, the Board of County Commissioners hereby reserves the
35 right to restrict overbuilding. Such restriction shall be effected only

1 by ordinance of the Board of County Commissioners.

2 (C) Based upon the potentiality of adverse overbuilds,
3 enclaving, and skipping, and in the event that the Board of County
4 Commissioners should determine, upon sufficient information, that
5 overbuilds, skipping, or enclaving are detrimental to the purposes of
6 this ordinance, the Board of County Commissioners hereby reserves the
7 right to establish exclusive or semi-exclusive Service areas to the
8 extent allowed by law. Such Service areas shall be effected only by
9 ordinance of the Board of County Commissioners. In adopting such, the
10 Board of County Commissioners shall consider at least one (1) the area
11 then served by each Cable Operator, (2) the area left to be served within
12 said Service area, (3) the extent of development then existing and at
13 build-out in said Service area and areas contiguous thereto, (4) the
14 number of Subscribers then served by each Cable Operator, (5) the then
15 existing Facilities And Equipment and all capital equipment, buildings,
16 and structures of the Cable Operator, (6) the technical, legal and
17 financial ability of the Cable Operators, and (7) the performance record
18 of the Cable Operators.

19 Section 8. Application Considerations.

20 The considerations and criteria set forth in this Ordinance to
21 assist the Board of County Commissioners may be changed by Ordinance as
22 the Board of County Commissioners deems appropriate, in accordance with
23 law.

24 Section 9. Boards.

25 The Board of County Commissioners reserves the right to create,
26 establish, or appoint such boards and Persons to assist it in
27 administering the provisions of this Ordinance and to establish a
28 procedure for the creation, establishment, appointment, or operation of
29 such.

30 ARTICLE XXVI. THEFT, VANDALISM, TAMPERING

31 Section 1. Violations.

32 It is unlawful and a Violation of this ordinance to:

33 (A) Willfully obtain or attempt to obtain Cable Services or
34 cable Related Services from another by means of artifice, trick,
35 deception, or device without payment to the operator of such Services of

1 all lawful compensation due for each type of Services unlawfully
2 obtained.

3 (B) Willfully assist or instruct any other Person in obtaining
4 or attempting to obtain any Cable Services or cable Related Services
5 without payment to the Cable Operator of such Services of all lawful
6 compensation due for each type of Services unlawfully obtained.

7 (C) Willfully tamper or otherwise interfere with or connect to
8 by any means, whether mechanical, electrical, acoustical, or other, any
9 cable, wires, or other devices used for the distribution of cable
10 Services or cable Related Services without actual authority from the
11 operator of such Services.

12 (D) Willfully sell, rent, or lend, or promote or advertise for
13 sale, rental, or use, any device or any plan to any Person with the
14 knowledge that the Person intends to use such device or plan to commit
15 any of the acts set forth in paragraphs (a), (b), and (c), whether or not
16 such device or plan actually has the ability to facilitate the commission
17 of any acts set forth in paragraphs (a), (b), and (c).

18 (E) Willfully sell, rent, or lend, or promote or advertise for
19 sale, rental, or use, without actual authority from the operator of such
20 Cable Services or cable Related Services, any device which is
21 electronically capable of decoding Cable System signals which have been
22 encoded by a Cable Operator or any Person under contract with such
23 operator.

24 Section 2. Prima Facie Evidence.

25 The presence on property, in the actual possession of a Person,
26 of any connection, wire, conductor, or device or alteration whatsoever
27 which effects the diversion or use of Cable Services or cable related
28 Services without such Services being reported for payment to, and
29 specifically authorized by, the Cable Operator shall be prima facie
30 evidence of intent to violate this section; however, this presumption
31 shall not apply unless:

32 (A) The presence of such a device, alteration, or plan can be
33 attributed only to a deliberate act in furtherance of an intent to avoid
34 payment for such Services; and

1 (B) The Person charged has received the direct benefit of the
2 reduction of the cost of such Services; and

3 (C) The recipient of such Services has received the benefit of
4 such Services for at least one full billing cycle.

5 Section 3. Confiscate.

6 Any law enforcement agency having jurisdiction shall have the
7 authority to confiscate any and all such instruments, apparatus,
8 equipment, devices, instructions, and plans described in this section,
9 including any materials, tools, machinery, or equipment used to
10 manufacture or produce such instruments, apparatus, equipment devices,
11 instructions, and plans, and, upon conviction for Violation of the
12 provisions of this section, such instruments, apparatus, equipment,
13 devices, instructions, and plans, together with all such materials,
14 tools, machinery, and equipment used to manufacture or produce same,
15 shall be destroyed or otherwise disposed of by order of court.

16 Section 4. Punishment.

17 Any Person who willfully violates this Article, Section 1 shall
18 be guilty of a Violation of a County ordinance punishable as provided in
19 Florida Statutes §125.69.

20 Section 5. Civil Damages.

21 Whoever is found in a civil action to have violated the
22 provisions of this section shall be liable in actual and punitive damages
23 to the Cable Operator involved or may be subject to injunction, or both,
24 and, upon judgment in favor of the Cable Operator, such operator shall
25 also be entitled to recover all costs of such action, including all
26 appellate proceedings, together with reasonable attorney's fees.

27 Section 6. Non-exclusive.

28 The provisions set forth herein are in addition to any remedies
29 or sanctions of any other local, state, or federal law.

30 ARTICLE XXVII. SUBSCRIBER RIGHTS

31 Section 1. Privacy.

32 The Cable Operator shall comply with the provisions of Section
33 631(a)-(e) of the Cable Communications Policy Act of 1984.

1 Section 2. Rights of Individuals.

2 Company shall not deny Service, deny access, or otherwise
3 discriminate against Subscribers, Channel users, or general citizens on
4 the basis of race, color, religion, national origin, or sex. Company
5 shall comply at all times with all other applicable federal, state and
6 local laws and regulations, and all executive and administrative orders
7 relating to nondiscrimination.

8 Section 3. Subscriber Contract.

9 Unless a written contract exists between grantee and
10 Subscriber, Service shall be provided on a month to month basis.
11 Subscriber may terminate Service at any time without penalty.

12 Section 4. Provision of Service.

13 The Licensee shall not, without good cause, fail to provide
14 available Service to individuals or prospective Subscribers nor shall the
15 Licensee terminate Service without good cause. Service shall be provided
16 to all interested customers where the density requirements herein exist.

17 Section 5. No Preference.

18 No Cable Operator shall make or grant any undue preference or
19 advance, relative to rates, charges, Service, Service facilities, rules,
20 regulations or in any other respect, to any Person. Nor shall any
21 Licensee subject any Person or grup of Persons to any prejudice or
22 disadvantage.

23 Section 6. Public Notice.

24 Minimum public notice of any Board of County Commission public
25 meeting relating to the Franchise (including transfers) shall be given by
26 the Cable Operator notifying its Subscribers of the meeting by
27 announcement on at least one (1) basic Channel of its CATV system between
28 the hours of 7:00 P.M. and 9:00 P.M. for five (5) consecutive days not
29 less than one (1) day nor more than ten (10) days prior to the date of
30 the public hearing.

31 Section 7. Notice Regarding Cable Coordinator.

32 Cable operators shall, at least once every year, place in its
33 billing the name, phone number, and address of the Cable Coordinator, or
34 such other Person as the Cable Coordinator may designate and a statement
35 that unresolved complaints may be directed to that Person.

1 ARTICLE XXVIII. CRIMINAL PENALTIES

2 Section 1. Scope.

3 (A) Any Person found guilty of intentionally violating the
4 provisions of this Ordinance relating to the matters set forth below in
5 this paragraph shall be punished in accordance with Florida Statutes,
6 Section 125.69. The specific matters are as follows:

7 (1) Installation of Facilities And Equipment in a Public
8 Right-of-Way without having obtained a franchise.

9 (2) Installation of Facilities And Equipment outside of the
10 franchise area.

11 (3) Refusing to obtain a permit and adhere to the inspection
12 and Installation requirements for Installations in Right-of-Ways after
13 notice from the Cable Coordinator.

14 (4) Refusing to take measures to remedy a specific system-wide
15 outage after notice from the Cable Coordinator.

16 (5) Refusing to take measures to remedy a specific outage
17 involving more than two hundred (200) Subscribers after notice from the
18 Cable Coordinator.

19 Section 2. Not Related To Civil Remedies.

20 The criminal provisions set forth in Section 1 are hereby
21 declared to be unrelated to the civil remedies of the County set forth in
22 this Ordinance or otherwise permitted by law or ordinance.

23 ARTICLE XXIX. RATES

24 Section 1. Franchise Fee Rates.

25 The Board of County Commissioners reserves the right to
26 increase Franchise fee rates to the extent which may be permitted by law.

27 Section 2. Non-discrimination On Rate.

28 No Cable Operator shall discriminate between Subscribers as to
29 any charge for cable or Other Services; provided, however, bulk rate
30 contracts are permitted as set forth below.

31 Section 3. No Redlining.

32 No cable or Other Services shall be denied to any group of
33 potential residential Subscriber because of the income of the residents
34 of the local area in which such group resides.

1 Section 4. Bulk Rates, Promotionals.

2 Nothing herein shall preclude the Cable Operator from entering
3 into bulk rate contracts for Cable Services, from engaging in promotional
4 activities, or providing employee discounts.

5 ARTICLE XXX. RESTRICTIONS ON OWNERSHIP/SELLING OF SIGNAL

6 Section 1. Imputing Revenue.

7 Should any Cable Operator sell signal to an affiliated
8 Satellite Master Antenna System Operator located within Palm Beach
9 County, the Gross Revenue of the SMATV Operator shall be imputed to the
10 Gross Revenue of the Cable Operator for purposes of the fees calculated
11 on the basis of Gross Revenue set forth herein; and the Cable Operator
12 shall owe the County said fees based upon the Gross Revenue of both the
13 Cable Operator and the SMATV Operator.

14 Section 2. Unaffiliated.

15 The Gross Revenue of a SMATV Operator who purchases signal of
16 an unaffiliated Cable Operator shall not be imputed to said Cable
17 Operator.

18 Section 3. Interconnection.

19 Nothing in this Article XXIX shall be construed as affecting
20 the determination of whether an affiliate SMATV System is, in fact, for
21 the purposes of this Ordinance, a part of the cable system, subject to
22 this entire Ordinance, by virtue of interconnection with and joint
23 operation of the cable system and SMATV facilities and equipment.

24 ARTICLE XXXI. LEASED ACCESS CHANNELS

25 Section 1. Section 612.

26 The Cable Operator shall comply with the provisions of Section
27 612 of the Cable Communications Policy Act of 1984.

28 Section 2. Notice to Cable Operator.

29 The Cable Operator shall notify the Cable Coordinator of
30 commercial Channel lessees desiring to use Channels pursuant to said
31 Section 612 and this Article; and shall inform the Cable Coordinator of
32 any agreements or arrangements between the Cable Operator and such
33 persons, and of any material change in such agreement or arrangement.

1 Section 3. Gross Revenue of Users of System.

2 Pursuant to Section 622 (h)(1) of the Act the Gross Revenue of
3 persons using the cable system to provide Cable Services or Cable Related
4 Services which is derived from the person's use of the cable system shall
5 be subject to a fee in the amount of the fee as set forth in Article XII,
6 and the fee is hereby levied in accordance with the provisions set forth
7 in Article XII. Any rents paid to the Cable Operator by commercial
8 channel lessees shall be excluded from the Cable Operator's gross
9 revenue.

10 Section 4. Cable Operator's Duty.

11 The Cable Operator shall be responsible for ensuring that the
12 fees owed to the County pursuant to this Ordinance are paid, and shall
13 remit to the County such fees. Appropriate contractual provisions
14 between the Cable Operator and the commercial Channel lessee shall be
15 established.

16 Section 5. Books, Reporting.

17 The County shall have access to all books and records of both
18 the Cable Operator and the users of the cable system relating to the
19 income derived from the leasing of commercial Channels, and the user of
20 the cable system shall make reports, all in accordance with the
21 requirements of Article XIII.

22 ARTICLE XXXII. PUBLIC, EDUCATIONAL, GOVERNMENT ACCESS CHANNELS

23 INSTITUTIONAL NETWORK

24 Section 1. Activated PEG Channel.

25 Within three (3) months after the effective date of this
26 Ordinance, one Channel shall be activated and available for government
27 and public educational programming. The use of the Channel may be made
28 through the office of the Cable Coordinator until such time as the PEG
29 Access Board assumes editorial control. Cable operators shall cooperate
30 with the Cable Coordinator in showing government and public educational
31 programming.

32 Section 2. PEG Access Board.

33 Within six (6) months after the effective date of this
34 Ordinance, the Board of County Commissioners shall, by resolution or
35 ordinance, appoint a Public, Educational, and Government Access Board,

1 hereinafter "PEG Access Board". The PEG Access Board shall be empowered
2 to review the various means available to provide public, educational, and
3 government programming and access to Channels. It shall be required to
4 report to the BCC on the use of the PEG monies, and the implementation of
5 a public, educational, and government programming and access program. If
6 it is given editorial control, it shall be incorporated as a non-profit
7 corporation.

8 Section 3. Report of Cable Coordinator.

9 The Cable Coordinator shall, within four (4) months following
10 the effective date of this Ordinance, report to the BCC on the various
11 possible powers and duties of the PEG Board.

12 Section 4. Schedule of Activation.

13 The Cable Operator shall have available for use as set forth
14 herein, and except as allowed pursuant to rules and regulations later
15 adopted, three (3) public, educational, and government programming and
16 access Channels. In addition to the Channel activated pursuant to
17 Section 1, said Channels shall be activated as such are determined to be
18 needed by the Board of County Commissioners or its designee. The PEG
19 Access Board shall develop criteria for the use of such Channels and the
20 Cable Operator's use of such Channels when not needed for public,
21 educational, or government programming and access. In no case shall the
22 Channel implementation schedule be more stringent than the following
23 formula:

24 A Public, Educational, and Governmental
25 Access Channel shall be available within
26 the time set forth in Section 1. At
27 such time as eighty percent (80%) of the
28 available time between 8 A.M. and 10 P.M.
29 is utilized for locally produced Public,
30 Educational, and Governmental Access
31 programming on the then-used Channel for
32 a period of six (6) consecutive months, an
33 additional Channel will be made available
34 for public, educational, and governmental
35 access use upon written notice to the

County requesting same. A third Channel will be made available for the foregoing purpose in accordance with procedure set forth above provided that the system Channel capacity is thirty (30) or more video Channels.

Section 5. Interconnect.

The activated PEG channels shall be interconnected upon six (6) months notice from the County to the Cable Operator.

Section 6. Institutional Network.

(A) The Board of County Commissioners reserves the right to require the establishment of an interconnected Institutional Network provided that the County shall not require the installation of a cable separate from the cable presently utilized to provide cable services. Not more than one (1) channel shall be required to be set aside for an Institutional Network.

(B) The Cable Coordinator shall cause to be reviewed the technical and economic feasibility of establishing an Institutional Network and report back to the Board of County Commissioners within six (6) months of the effective date of this Ordinance.

Section 7. PEG Fees.

(A) (1) Beginning six (6) months after the effective date of this Ordinance, the Cable Operators shall pay, in addition to the franchise fee and all other fees, charges, and costs, one percent (1%) of its gross revenue to Palm Beach County for capital costs associated with public, educational, or government access programming hereinafter "PEG fee".

(2) Said one percentum (1%) shall be remitted in accordance with the requirements of Article XII, "Fees" Section 2, and shall be subject to the terms and provisions of said Section 2.

ARTICLE XXXIII. OFFICE OF CABLE COORDINATOR

Section 1. Office Required.

There is hereby required an office of the Cable Coordinator to administer the day to day regulation of Cable Operators.

1 Section 2. Duties.

2 (A) The Cable Coordinator shall be responsible for the
3 handling of all affairs relating to Cable Operators. The Cable
4 Coordinator shall report to, serve as a member on, and chair the cable
5 board. The Cable Coordinator shall report to the County Administrator's
6 Office, and shall handle all complaints of Subscribers directed to the
7 County relating to Cable Operators or Cable Services. The Cable
8 Coordinator shall have such powers and duties as are necessary to
9 effectively administer this Ordinance. After notification to the Cable
10 Operators, the Cable Coordinator shall adopt rules and regulations, and
11 update such, so as to ensure the effective regulation of Cable Operators.

12 (B) The Cable Coordinator shall maintain all records held by
13 the County relating to Cable Operators, except those records held by the
14 County Engineer relating to the permitting process set forth in Article
15 XIV. These records shall include a file on each Cable Operator, a record
16 of the special costs incurred in each application for renewal, transfer,
17 or initial award, maps of Facilities And Equipment of each Cable Operator
18 (excluding individual Subscriber drops), a uniform complaint records on
19 each Cable Operator, and performance review transcripts, if any, on each
20 Cable Operator.

21 (C) The Cable Coordinator shall coordinate all public hearings
22 and meetings, and, where required, shall notify the Cable Operator(s) of
23 such.

24 (D) The Cable Coordinator shall be responsible for notifying
25 the Cable Operator of alleged Violations of this Ordinance.

26 (E) The Cable Coordinator shall administer the permitting
27 requirements of this Ordinance, in conjunction with the County Engineer.

28 (F) The Cable Coordinator shall prepare the reports to the
29 Board of County Commissioners relating to this Ordinance.

30 (G) The Cable Coordinator shall maintain maps of the Service
31 areas and Installations of Facilities And Equipment of the cable
32 operators.

33 (H) The Cable Coordinator shall oversee operations of cable
34 operator in County.

1 (I) The Cable Coordinator shall investigate customer
2 complaints.

3 (J) The Cable Coordinator shall monitor construction progress
4 of Cable Operators.

5 (K) The Cable Coordinator shall oversee technical
6 specifications and performance standards.

7 (L) The Cable Coordinator shall oversee the development of the
8 access Services and adequacy of public access Channels.

9 (M) The Cable Coordinator shall advise on the necessary
10 changes to the systems as to the state of the art technology in design.

11 Section 3. Temporary Measures.

12 The Cable Coordinator shall have the authority to approve, upon
13 the advice of the County Engineer's Office, where appropriate, such
14 temporary measures necessary to assure continued Cable Service.

15 ARTICLE XXXIV. APPEALS

16 Section 1. Stranding.

17 Any Person aggrieved by any decisions issued pursuant to this
18 Ordinance shall appeal such decision in accordance with this Article
19 XXXIV, except as specifically set forth in this Ordinance. Requests for
20 appeal must be filed within thirty (30) days of the date the decision is
21 rendered.

22 Section 2. Procedure.

23 (A) Appeals from the decision of the employees or Persons
24 reporting to the Cable Coordinator shall be to the Cable Coordinator who
25 shall, where appropriate, confer with the County Administrator. Appeals
26 from the decision of the Cable Coordinator shall be to the Cable Review
27 Board. Appeals from the decision of the Cable Review Board shall be to
28 the Board of County Commissioners. The decision of the Board of County
29 Commissioners shall constitute final County action.

30 (B) Requests for appeal may be denied. If heard, the appeal
31 shall be heard within thirty (30) days of the date the written request
32 for appeal is delivered to the Cable Coordinator. If an appeal request
33 is denied, the request shall be forwarded by the Cable Coordinator to the
34 next level of appeal, unless the denial to hear the appeal is that of the
35 Board of County Commissioners. If the appeal is not heard by the Board

1 of County Commissioners, the decision appealed to the Board of County
2 Commissioners shall constitute final County action. Only final County
3 action, as set forth in this paragraph (B) shall be appealed to a court
4 of competent jurisdiction.

5 (C) For good cause shown to, or as required by, the Board of
6 County Commissioners the appeal may go directly to the Board of County
7 Commissioners from any level.

8 ARTICLE XXXV. COSTS FOR ENFORCEMENT

9 For any action against a Cable Operator initiated by the Board
10 of County Commissioners of this Ordinance including administrative and
11 judicial actions pursuant to Articles XIX, XX, and XXI, the County shall
12 be entitled to all expenses, costs, and attorneys' fees, including costs
13 associated with the time spent by County employees, officials, agents,
14 and contractors, provided the County prevails. Should the County not
15 prevail in any judicial enforcement action, the Cable Operator shall be
16 entitled to costs and reasonable attorneys' fees.

17 ARTICLE XXXVI. REQUESTS FOR MODIFICATION

18 Section 1. Records, Furnished.

19 Should the Cable Operator make a request for modification of
20 this Ordinance, or the Representations Made In The Application Process
21 pursuant to Section 625 of the Act, or otherwise, the County may require,
22 and the Cable Operator shall furnish all financial books and records of
23 the Cable Operator, including those of Affiliates.

24 Section 2. Pay All Costs.

25 The Cable Operator shall be responsible for paying all costs
26 and expenses incurred by the County, including the costs of its
27 employees, officers, agents, and contractors, associated with reviewing
28 and acting upon any request for modification.

29 ARTICLE XXXVII. SEVERABILITY

30 Section 1. Severability.

31 If any Article, Section, subsection, paragraph, sentence,
32 clause, phrase, word or portion of this Ordinance is for any reason held
33 invalid or unconstitutional by any court of competent jurisdiction, such

1 portion shall be deemed a separate, distinct and independent provision,
2 and such holding shall not affect the validity of the remaining portions
3 thereof.

4 Section 2. Applicability Not Affected.

5 If any Article, Section, paragraph, subsection, sentence,
6 clause, phrase, word, or portion of this Ordinance is for any reason held
7 invalid, unconstitutional, or inapplicable to any Person or group of
8 Persons by any court of competent jurisdiction, such holding shall not
9 affect the applicability, validity, or constitutionality of the Ordinance
10 with respect to any Person or group of Persons not similarly situated.

11 ARTICLE XXXVIII. EFFECTIVE DATE/EXISTING CABLE OPERATORS

12 The provisions of this Ordinance shall become effective upon
13 receipt of acknowledgement by the Secretary of State. This Ordinance
14 shall be binding in its entirety on all Cable Operators receiving their
15 franchise by initial award, transfer, or expansion after November 1,
16 1984; provided such shall not require the reapplication and
17 reconsideration of such initial, expansion, or transfer application or
18 award for Cable Operators receiving such initial, expansion, or transfer
19 award after November 1, 1984 and before the effective date of this
20 Ordinance.

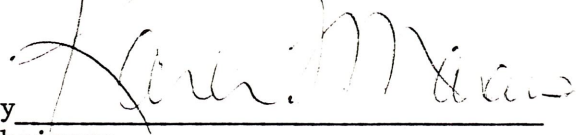
21 To the extent permitted by law, this Ordinance shall be binding
22 on all Cable Operators receiving their most recent initial, transfer, or
23 expansion franchise award prior to November 2, 1984. Cable Operators may
24 accept this Ordinance in its entirety by execution of an acceptance
25 agreement on a form approved by the County Attorney.

26 ARTICLE XXXIX. PREVIOUS ORDINANCES

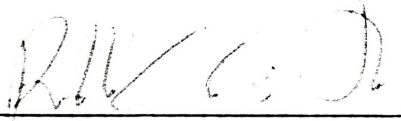
27 Ordinances numbered 72-17, 73-11, 73-14, 76-3, 78-3, and 80-16
28 are hereby superceded in their entirety, and the provisions of this
29 Ordinance shall govern.

1 APPROVED AND ADOPTED by the Board of County Commissioners of
2 Palm Beach County, Florida, on the 30th day of September, 1986.

3 PALM BEACH COUNTY, FLORIDA, BY ITS
4 BOARD OF COUNTY COMMISSIONERS

5 By 
6 Chairman

7 APPROVED AS TO FORM
8 AND LEGAL SUFFICIENCY

9 By 
10 County Attorney

11 Acknowledgement by the Department of State of the State of
12 Florida, on this, the 9th day of October, 1986.

13 EFFECTIVE DATE: Acknowledgement by the Department of State
14 received on the 14th day of October, 1986, at 4:20
15 P.M., and filed in the Office of the Clerk of the Board of County
16 Commissioners of Palm Beach County, Florida.

ENCLOSED
ORDINANCE